



INDEX.

	PAGE
Indictment	1
Order Appointing Defendant Counsel	5
Defendant's Affidavit to Proceed in Forma Pauperis	6
Defendant's Application for Appointment of Counsel and for Leave to Proceed in Forma Pauperis	7
Plea in Abatement	8
Order Allowing Withdrawal of Co-counsel and Fix- ing Date for Argument on Plea in Abatement	11
Motion for Appointment of Psychiatrists	12
Motion to Strike Plea in Abatement with Exhibits	13
Affidavit of—	
(a) John I. Messmer	14
(b) Mrs. Alice Speed Stoll	15
(c) Berry V. Stoll	17
(d) Claude Hudgins	18
Memorandum of Authorities, on Government's Mo- tion to Strike	21
Additional Memorandum of Authorities on Govern- ment's Motion to Strike	22
Motion to Permit Defendant to Inquire into Proceed- ings and Evidence Before the Grand Jury	22
Affidavit of Defendant's Counsel in Support of Mo- tion	23
Memorandum of Decisions in Support of Plea in Abatement	25
Order Overruling Motion to Procure Affidavits from Grand Jurors	25
Motion for Rule to Compel United States to Reply to Plea in Abatement	26

Order for Rule to Issue and Adjudging Motion to Strike Sufficient Answer to Motion for Rule....	27
Motion to Strike Plaintiff's Motion for Appointment of Psychiatrists	27
Order Overruling Defendant's Motion to Strike Motion by the United States for Appointment of Psychiatrists	29
Defendant's Motion to Dismiss Indictment.....	30
Order Overruling Defendant's Motion to Dismiss Indictment	30
Defendant's Motion to Elect on Which Count of the Indictment Defendant Will Be Prosecuted.....	31
Order Overruling Defendant's Motion to Elect on Which Count Defendant Will Be Prosecuted....	32
Defendant's Demurrer to Indictment.....	33
Order Overruling Demurrer.....	34
Order Appointing Psychiatrists.....	34
Order Overruling Defendant's Motion to Fix Bail....	35
Order Sustaining Motion to Strike Plea in Abatement.	36
Order Allowing Defendant to Defend this Action in Forma Pauperis	36
Defendant's Waiver as to Contention of Insanity....	37
Formal Arraignment and Plea of Not Guilty and Case Assigned to November 29, 1943 for Trial at 9:30 a. m.	37
Defendant's Motion for Order of Personal Attendance of Doctors to be Paid by United States.....	38
Defendant's Affidavit in Support of Motion for Order of Personal Attendance of Doctors.....	39
Order Sustaining Defendant's Motion for Personal Attendance of Physicians and Payment of Their Fees	40
Defendant's Motion for Order of Personal Attendance of Witnesses and Payment of Fees.....	41

Defendant's Affidavit in Support of Motion for Order of Personal Attendance of Witnesses.....	42
Order Overruling Defendant's Motion for Order of Personal Attendance of Witnesses.....	44
Order Filing Affidavit of Harold Hall, Deputy United States Marshal as to Service of List of Witnesses and Jurors and their addresses on Defendant and His Counsel	46
Affidavit of Harold Hall, Deputy United States Marshal as to Service of Names of Witnesses and Jurors and Their Addresses on Defendant and His Counsel.	46
Order Filing Affidavit of Harold Hall Deputy United States Marshal as to Service on Defendant and Counsel of List of Names and Addresses of United States Witnesses and Names and Addresses of all Jurors Summoned	48
Order for Two Additional Jurors as Alternate Jurors.	48
Order Keeping Jury Together at Brown Hotel, Louisville, Ky.	49
Order Administering Oath to Deputy Marshals and Special Bailiff in Charge of Jury.....	49
Motion for Directed Verdict of Acquittal and Dismissal	50
Motion to Strike and Exclude Government Exhibits.	50
Motion for Directed Verdict of Acquittal and Dismissal at Close of Entire Case.....	54
Trial Order, and Verdict of Jury.....	55
Motion in Arrest of Judgment.....	60
Motion and Grounds for New Trial.....	61
Judgment and Sentence.....	66
Additional Grounds in Support of Motion for New Trial	68
Affidavit of Thomas Henry Robinson, Jr.....	72
Application for Leave to Proceed in Forma Pauperis on Appeal	73

Order Filing Defendant's Additional Grounds in Support of Motion for New Trial, and Application to Proceed in Forma Pauperis.....	74
Response of the United States of America to Certain Portions of the Motion and Grounds for New Trial Filed on December 13, 1943 and to Certain Points Contained in the Additional Motion and Grounds for New Trial Filed on December 16, 1943	74
Affidavit of Marion O. Cassady.....	78
Affidavit of Bernadine Kearney.....	80
Affidavit of John Moorman.....	81
Affidavit of Ida Robinson.....	82
Affidavit of John G. Faulkner, Jr.....	84
Affidavit of James C. Bulman.....	87
Order Filing Response of the United States to Certain Portions of Motion and Grounds for New Trial and Additional Grounds for New Trial....	87
Order Overruling Motion and Grounds for New Trial.	88
Notice of Appeal to the United States Circuit Court of Appeals, Sixth Circuit.....	89
Notice of Appeal to the United States Circuit Court of Appeals, Sixth Circuit.....	90
Order Filing Notice of Appeal and Grounds of Appeal	101
Order Sustaining Application to Proceed in Forma Pauperis on Appeal to the Circuit Court of Appeals	101
Motion for Order Staying and Suspending Execution of Judgment and Fixing Bail.....	102
Order Filing Motion to Stay Execution and for Superseas to Issue and Notice of Motion with Service of Special Bailiff.....	103
Order Staying and Suspending Execution of Sentence Pending Appeal	103

	PAGE
Order Overruling Motion for Bail.....	104
Notice	105
Order Filing Written Report of Psychiatrists.....	105
Report of Psychiatrists.....	106
Affidavit of Robert E. Hogan.....	107
Affidavit of Thomas Henry Robinson, Jr.....	109
Designation of Contents of Record on Appeal.....	111
Order Filing Designation of Contents of Record on Appeal	112
Motion to Extend Time for Filing Record on Appeal and Docketing the Action.....	112
Order Extending Time for Filing Record on Appeal and Docketing Action.....	113
Motion	113
Order Extending Time for Filing Assignment of Errors and Bill of Exceptions.....	114
Order Permitting Defendant's Appeal in Forma Pauperis	114
Assignment of Errors.....	115
Order Filing Assignment of Errors.....	170
Bill of Exceptions.....	170
Transcript of Court Proceedings Had Before the Trial of Thomas Henry Robinson, Jr.....	172

TESTIMONY FOR THE GOVERNMENT.

	Direct	Cross	Redirect	Recross
Claude Hudgins	206	207	210	
Transcript of Evidence.....				218

TESTIMONY FOR THE GOVERNMENT.

	Direct	Cross	Redirect	Recross
Henry Wehmhoff . . .	451			
George L. Strain.....	455	457		

TESTIMONY FOR THE GOVERNMENT

(Continued).

	Direct	Cross	Redirect	Recross
J. Dawson Van Eps...	458	466		
Clair M. Hill.....	471	473	476	
J. E. Saunders.....	476	483		
John H. Rohman....	487			
J. E. Bosler.....	488	490		
William A. Groves..	492	493		
Ella Schaaf	494	500		
Mrs. George Stoll....	504	507	510	511
H. C. Kottke.....	511	515		
Mrs. Alice Speed Stoll	518	548		
Dr. Harry S. Frazier.	589	592		
William Marshall				
Bullitt	595	599		
Mrs. Ann Woollet....	600	612		
Mrs. Douglas Potter.	633	637		
Cornelius Gerst . . .	639	641		
Arthur E. Gohmann.	641	643		
Matthew B. Senn.....	644	645		
Ernest V. Kamp-				
fmuellet	646	647		
L. M. Render.....	647	649		
Vincent Tobe	649	651		
Flavie C. Adams.....	651	653		
Berry V. Stoll.....	653	663		
William S. Speed....	665	666		
John E. Tarrant.....	667	668		
Robert E. Creager...	669	674		
Capt. John I.				
Messmer	675	679		
Stuart R. Kerr.....	679	681		
Harry J. Hilpp.....	683	685	686	
James R. Caldwell...	686	688		

TESTIMONY FOR THE GOVERNMENT (Continued).

	Direct	Cross	Redirect	Recross
John M. Ridge.....	689	691	691	
Edgar N. Wood.....	692	694		
Ferriss C. Bailey....	695	697		
Joseph R. Johnson..	699	705 708	706	
Sam K. McKee.....	730	734		
James D. Reynolds..	735	739		
Arthur Gunderson . .	745			
H. C. Richardson....	747	750	754, 755	754
Albert E. Farland....	755			

VOLUME II.

	Direct	Cross	Redirect	Recross
Mrs. R. L. Harris....	759			
Mrs. John Peiffer....	762			
Eli Bright	764	765		
Mrs. John Peiffer (Recalled)	766	769		
J. L. Bowling.....	770	772		
William Toucher . . .	772	774		
Albert E. Patterson..	774			
Fred Schmidt	777			
Ralph Cribari	778	780	782	783
Louis O. Doty.....	783			
John G. Contat.....	784	786		
Mrs. Louise Van Houten	786			
Emil Berg	788			
Mrs. Anna S. Webb..	791	794		
Harry Street Jenkin- son	795			
Clarence Christian Smith	797			

TESTIMONY FOR THE GOVERNMENT (Continued).

	Direct	Cross	Redirect	Recross
Roy McMains	799			
Harry Kaufman	802			
Leo Shactmayer	804			
Earl J. Connelley	805	807	810	811
John P. Knowles	812			
Richard E. Smith	827	829		
Edwin R. Donaldson . . .	829	832		
Sam K. McKee (Recalled)	832			
Charles A. Appel	833			
Robert H. Laughlin . . .	856	858		
John S. Bugas	858			

TESTIMONY FOR THE DEFENDANT.

	Direct	Cross	Redirect	Recross
Thomas H. Robinson, Jr.	880	945	991	993
Alvin W. Kirtley	995	997	1015	1017
Joseph M. Long, Sr. . . .	1018	1021	1021	
Fowler B. Woolet	1021			
Joseph M. Hayse	1032	1034		1035
	1034			
Fowler Woolet	1037,	1038,	1038,	1038,
	1042	1043	1043,	1039,
			1044	1044
Alvin W. Kirtley (Recalled)			1047	1045
Fred Smith	1055			
Marjorie Kirchhubel . . .	1056			
William K. Powell	1058	1067		
Mrs. Jessie Robinson . . .	1069	1085		
Richard M. Atkinson . . .	1086	1089	1092,	1093
			1094	
Dr. H. B. Brackin	1094			
Marjorie Kirchhubel . . .	1122	1122		

TESTIMONY FOR THE DEFENDANT (Continued).

	Direct	Cross	Redirect	Recross
Dr. H. B. Brackin				
(Recalled)	1123	1140	1142, 1145	1143
Dr. Thomas J. Crice . .	1145, 1152, 1153			
Dr. Leon L. Solomon .	1149, 1152			
Joseph M. Hayse . . .	1177			
Mrs. Nellie Stoess				
Hayse	1185			
Dr. Leon L. Solomon				
(Recalled)	1191			
Mrs. Ann Woolet . . .	1219	1220		
Dr. Leon L. Solomon				
(Recalled)		1224	1249	1251
Dr. Thomas J. Crice				
(Recalled)		1253	1262, 1269, 1274, 1286	1263, 1273, 1282

REBUTTAL TESTIMONY FOR THE GOVERNMENT.

	Direct	Cross	Redirect	Recross
Dr. David Gallo-				
way	1287	1289		
E. W. Cocke	1289	1297		
Ralph R. Barker	1312	1314		
John A. Ward	1314	1316	1318	1318
Dr. Merl E. Long	1319	1320		
Commander O. C.				
Dewey	1321	1323	1325	
Dr. Dennis E. Single-				
ton	1326	1333	1336	1337
Dr. R. M. Richey	1337	1341		

REBUTTAL TESTIMONY FOR THE GOVERNMENT (Continued).

	Direct	Cross	Redirect	Recross
Elmer G. Allen.....	1347			
Edward S. Palmer . .	1349	1355		
Mrs. Edward S. Palmer	1356	1360		
A. G. Shields.....	1362	1364		
Dr. E. E. Landis.....	1366			
Dr. Isham Kimball...	1367			
Dr. Spafford Ackerly.	1369			
Dr. W. E. Gardner..	1370	1390		
Dr. Isham Kimbell...	1372, 1397	1397		
Dr. Edward E. Landis	1372, 1401	1402		
Dr. W. E. Gardner (Recalled)	1408			
Dr. Isham Kimbell (Recalled)	1408			
Dr. Edward E. Landis (Recalled)	1408			
Dr. Spafford Ackerly	1372, 1409	1410	1411	1412

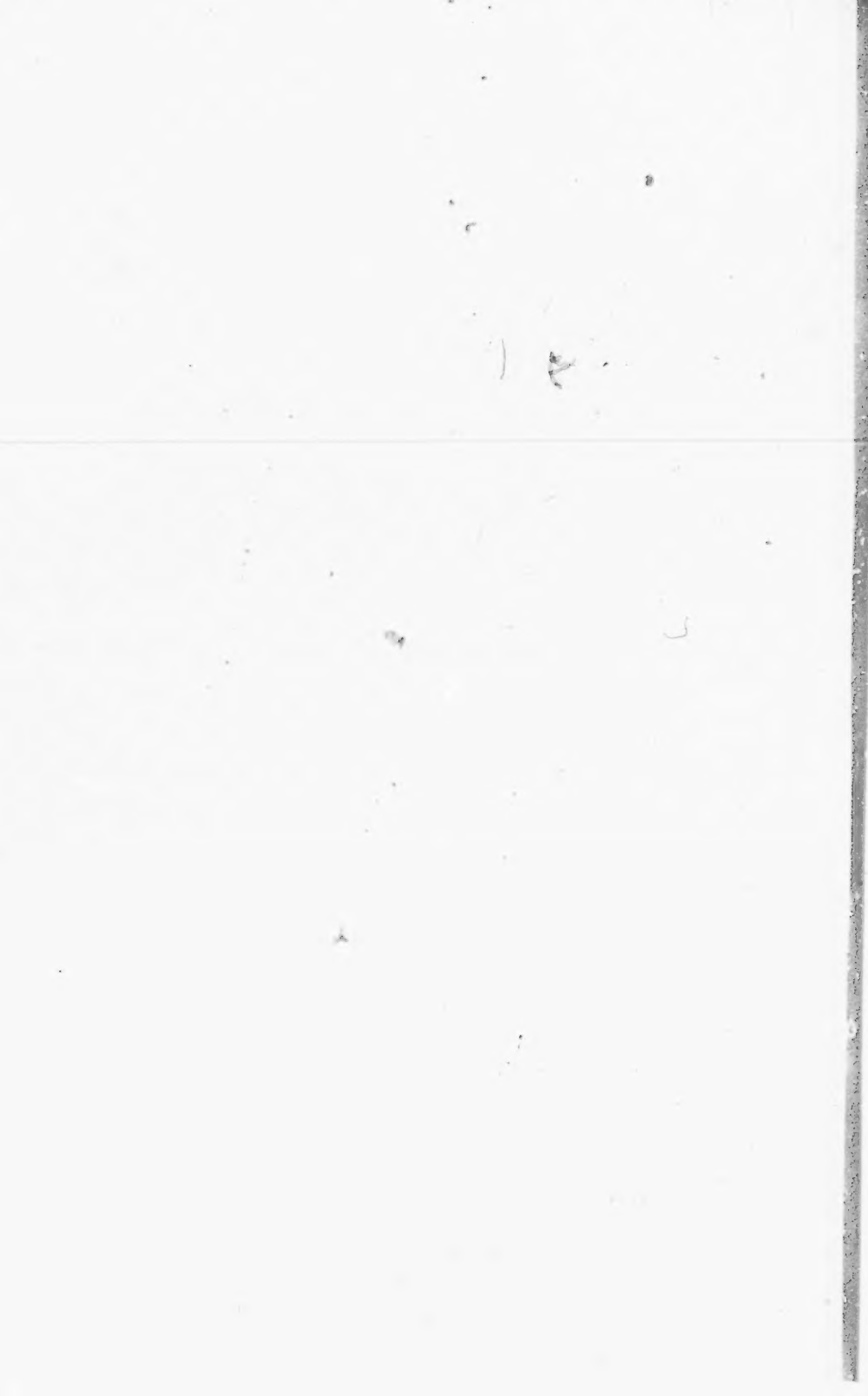
SUR-REBUTTAL TESTIMONY FOR DEFENDANT.

	Direct	Cross	Redirect	Recross
Dr. Thomas J. Crice (Recalled)	1413		1415	1414
Ivan Carlisle	1415	1424		

PAGE

Judgment and Sentence.....	1548
Defendant's Request to Charge.....	1550
United States Request to Charge.....	1555
Motion to Transmit Original Exhibits or Photostatic Copies to Circuit Court of Appeals.....	1557

	PAGE
Order Transmitting Original Exhibits or Photostatic Copies to Circuit Court of Appeals.....	1557
Order Approving and Filing Bill of Exceptions.....	1558
Order Filing Exhibits.....	1558
Index to Exhibits.....	1559
Docket Entries	1561
Clerk's Certificate	1568
Proceedings in U. S. C. C. A., Sixth Circuit	1569
Minute entry of argument and submission	1569
Judgment	1569
Opinion, Hicks, J.	1570
Petition for rehearing	1593
Order denying rehearing	1619
Order staying mandate	1619
Clerk's certificate (omitted in printing)	1576
Order granting motion for leave to proceed in forma pauperis	1619
Order allowing certiorari	1620



TRANSCRIPT OF RECORD.

Thomas Henry Robinson, Jr., - - - - Plaintiff,
v.
United States of America, - - - - Defendant.

TRANSCRIPT OF EVIDENCE (Continued).

Louisville, Kentucky,
November 29, 1943.

Heard before:

Honorable Shackelford Miller, Jr., United States District Judge for the Western District of Kentucky, at Louisville,

and a jury.

Appearances:

Eli H. Brown III, United States Attorney, and
J. D. Inman, Assistant United States Attorney, for the plaintiff.

Robert E. Hogan, Kentucky Home Life Building, Louisville, Kentucky, for the defendant.

MRS. R. L. HARRIS was called as a witness for the government and, after having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Inman.

Q. State your name to the jury.

A. Mrs. Raymond L. Harris.

Q. Do you live at Mellen Place, Knoxville, Tenn.?

A. Yes.

Q. Where are you employed?

Testimony of Mrs. R. L. Harris

866* A. At the Tennessee Valley Authority.

Q. In what capacity?

A. Personnel Officer.

Q. Do you have in your charge and under your control the personnel files of the Tennessee Valley Authority?

A. I do.

Q. I will show you this paper, marked "Preliminary and Declaration Sheet", and ask you if that is a part of the records of the Tennessee Valley Authority?

A. Yes, it was.

Q. What is that record, Mrs. Harris?

A. The Tennessee Valley Authority gave what we call workmen's examinations in 1933 as a means of building up a register to recruit workmen to build some dams that we had contracted. Persons who took these examinations completed one of these forms. And this form has a number on it.

Q. What is that number?

A. 55629.

Q. What is the date of that form?

A. December 9, 1933.

Q. And what was the place of examination?

A. Nashville, Tennessee.

Q. Now, whose application is that?

A. Thomas H. Robinson, Jr.'s.

867 Q. And what is the address?

A. 1716 Ashwood Avenue, Nashville, Tennessee.

Q. Now is that form filled out on the typewriter?

A. No. It is filled out in pen and ink.

Q. In hand-printing?

A. Yes, sir.

Q. I will ask you to file that application with your testimony as government Exhibit No. 52.

Mr. Hogan: Now, if Your Honor please, that is objected to on this ground and for this reason: It is not pertinent to any issue raised in this indictment, and it has no bearing whatsoever on any charge or accusation or

*Inset numbers appearing at outer edge of text indicate page numbers of original stenographic transcript of evidence.

Testimony of Mrs. R. L. Harris

allegation in this indictment.

Mr. Inman: We will show the competency of it.

The Court: Is it offered for a specimen of handwriting?

Mr. Inman: It is offered as a specimen of handprinting.

The Court: I will have to take counsel's assurance that it will have some connection with the testimony. Of course, if it doesn't, your objection will be sustained but I cannot tell at this time what its pertinency is.

Mr. Hogan: If they attempt to connect it up, then we will meet the issue, or try to, at that time.

The Court: All right.

868 Mr. Inman: That is all.

Mr. Hogan: I certainly do not want to make competent otherwise incompetent testimony, so there are no questions.

The Court: Mrs. Harris, did you say that was made out in your presence?

Mrs. Harris: No, sir.

The Court: Did you see it signed?

Mrs. Harris: No, sir.

The Court: Was it given to you by anyone?

Mrs. Harris: It was given to me as a part of the official personnel file of the Tennessee Valley Authority.

The Court: Who gave it to you?

A. I asked the office to send me the personnel file of Mr. Robinson, and it was in that file when I received it.

The Court: No, I mean when it was filled out?

A. No.

The Court: When was the first time you saw it?

A. When I asked for the personnel file when the information was requested of me.

The Court: You mean a few years ago?

A. I may have seen it a few years ago, but I do
869 not recall it now.

The Court: Oughtn't there to be some other evidence?

Mr. Brown: There will be.

The Court: It will be kept in the minds of the jury for

Testimony of Mrs. John Peiffer

the present.

Mr. Brown: We will introduce handwriting experts on that, Your Honor.

The Court: All right.

MRS. JOHN PEIFFER was called as a witness for the government and, after having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Inman.

Q. State your name to the jury?

A. Mrs. John Peiffer.

Q. Where do you live?

A. 1547 West Main Street, Springfield, Ohio.

Q. In October of 1934 did you live at that same address?

A. That's right.

Q. Did you carry on any business at that address?

A. A tourist home.

870 Q. A tourist home?

A. That is right.

Q. In October 1934 did you maintain a book for your guests to sign?

A. That's right.

Q. I will show you this page and refer you to the last entry and ask you to tell the jury what that is?

Mr. Hogan: Now that is objected to, because all this witness has said is that she kept a record.

Q. I will ask you if that is a part of the book about which you have just testified?

A. That's right.

Q. Is that a part of the book that you maintained for your guests to sign?

A. That's right.

Q. Was that book kept in the usual course of your business there?

A. That's right.

Testimony of Mrs. John Peiffer

Q. Refer now to the last entry, and tell the jury what that is?

Mr. Hogan: Now that is objected to unless she shows the date.

Mr. Brown: If she knows the date.

Mr. Inman: We will get to that in just a minute—one thing at a time, Mr. Hogan.

871 Mr. Hogan: We have to get to that right now because that date is really important.

The Court: Is there any date on there?

Witness: I don't know. No, there is no date.

The Court: Have you any way of fixing the date?

Witness: No. It was in October but I could not say the exact date.

The Court: Of what year?

Witness: 1934.

The Court: You know that?

Witness: I am almost positive, yes.

Q. I will ask you what the last entry on that page is?

Mr. Hogan: I still renew my objection. October has 31 days in it and it could have been any day so far as the record now stands.

Mr. Inman: We will show by other evidence what the date of it is.

The Court: I don't know that a witness has to identify a particular day so long as she can get pretty close to the day. A month in 1934. Do you have any way to identify the date more definitely?

Witness: No; it was in October is all I can remember.

The Court: Do you know what day it was?

872 Q. Do you know what day of the week it was?

A. On Tuesday.

Q. All right—

The Court: Will there be some other evidence to more closely identify the exact date?

Mr. Inman: Yes, Your Honor.

The Court: All right.

Mr. Hogan: If your Honor please, I suggest that that entry be withheld until they do connect it up.

Mr. Inman: We will connect it by the next witness.

Testimony of Eli Bright

The Court: Well let this witness step aside for the moment and put on the next witness.

Mr. Inman: All right.

ELI BRIGHT was called by the government and, after having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Inman.

Q. State your name to the jury?

A. Eli Bright.

Q. Where are you employed?

A. Springfield Police Department, Springfield, Ohio.

873 Q. Were you employed by that department in October 1934?

A. Yes.

Q. Do you have the records of October 18, 1934, with you?

A. Yes, sir.

Q. Will you refer to that record?

A. Yes, sir.

Q. Did you have any occasion on October 18, 1934 to go to 1547 West Main Street, Springfield, Ohio?

A. Yes, sir.

Q. Who lives at that address?

A. Mrs. Peiffer.

Q. When you got to that address, what did you do and what did you see?

A. We found a 1934 Ford coach in the garage.

Q. What was the motor number of that Ford coach?

A. The motor number was 18-574-117.

Q. With reference to the "18", Mr. Bright, what did that indicate?

A. That is a prefix on the model of the car.

Q. On all Ford cars?

A. Yes, V8's.

Q. What license plate did that car have on it

Testimony of Eli Bright

874 at that time?

A. It had an Indiana license plate, 504-519.

Q. Did you examine the glove compartment of that car, Mr. Bright?

A. Yes, sir.

Q. What did you find?

A. I found a clip for a 45 automatic pistol, loaded.

Q. What did you do with that automobile?

A. It was ordered towed into our police garage.

Q. Was it later released to anyone?

A. It was released to Purvis, an Agent of the Federal Bureau of Investigation.

Q. Melvin Purvis?

A. That's right.

Q. Did you go into Mrs. Peiffer's house?

A. Yes, sir.

Q. Did you go into any room in that house?

A. Into a room on the second floor, yes.

Q. What did you find there?

A. I found a black suitcase, a cheap suitcase, and an oxford gray top coat, and there was also a magazine. I don't recall what magazine.

Q. And that occurred on October 18th?

A. Yes, sir.

Q. 1934?

875 A. Yes, sir.

The Court: Did you find just a clip, or did you find a pistol, too?

Witness: Just the clip.

The Court: There was no pistol?

The Witness: No.

Cross-examination by Mr. Hogan.

Q. Did you find anything else in this car?

A. There was a newspaper in the car. Also, a leather container for a driver's license or registration certificate.

Q. Did you find anything else in the room?

A. Not that I recall.

Q. Do you know how long that car had been there of

Testimony of Mrs. John Peiffer

your own knowledge?

A. No, sir.

Mr. Hogan: That's all.

MRS. JOHN PEIFFER was recalled by counsel for the government and testified as follows:

Direct Examination Continued by Mr. Inman.

Q. Mrs. Peiffer, I will ask you if you recall an
876 occasion in October 1934 when Mr. Eli Bright, of the Springfield, Ohio, Police Department came to your home?

A. That's right.

Q. And I believe they took an automobile from your garage.

A. That is right.

Q. With reference to that day, when was the entry made in your guest book that I have just asked you about.

A. Well it was on Tuesday but I can't remember the exact date.

Q. Was it the Tuesday before Mr. Bright came to your house?

A. That is right.

Mr. Hogan: Now I suggest that is leading the witness. She said she did not know.

The Court: Well, the question is leading, but I think it is for saving time and I do not see how it could be prejudicial to your client. Were you able to know of your own knowledge that it was anywhere close to the time Mr. Bright came there?

A. Yes, it was two days before he came down. He came on Thursday.

Q. Now will you read that last entry?

A. "Doken" isn't it?

877 Q. What is the first name?

A. I don't know. "South Bend, Indiana". I can't read that. It would be Jno. or Jony.

Q. I will ask you to read that to the jury?

Testimony of Mrs. John Peiffer

A. I don't know what that first name is.

Mr. Hogan: Wait a minute.

Mr. Brown: I confess she doesn't have to read the name to show it to the jury.

Witness: I can't make it out.

Mr. Hogan: It hasn't been established who wrote it, yet.

Q. Was that made by a guest at your home?

A. That is right.

Q. What time of the day or night did that guest arrive?

A. Along sometime in the afternoon.

Q. Have you seen that person since?

A. Yes.

Q. Who was he?

A. Mr. Robinson over there.

Q. Did he write that in your book?

A. That is right.

Mr. Hogan: The objection is renewed, unless she brings the complete book of which that page was a part.

The Court: What purpose does that have? I
878 think you could bring it out on cross examination if it would serve any purpose. Have you got the book, Mrs. Peiffer?

Witness: Yes, sir.

The Court: Where is it?

Witness: At home.

Q. When was that page torn from that book?

A. On Thursday when the police came down they took it out.

The Court: Mr. Hogan, do you want that book?

Mr. Hogan: No.

The Court: It is not necessary for the government to have it. But if you want it, we will bring it in for you.

Mr. Hogan: No, I don't want it; I want to keep it out.

The Court: Well let the record show that if he wants the complete book on cross-examination we will ask the witness to produce it.

Mr. Inman: Do you want her to send for that book?

Mr. Hogan: Are you through with the witness?

Testimony of Mrs. John Peiffer

Q. I will ask you to file this page with your testimony as Government Exhibit No. 53?

The Court: Let me see it.

Mr. Inman: All right (handing paper to Court.)

879 Mr. Hogan: That is objected to, Your Honor.

The filing of it.

The Court: What is the basis of your objection?

Mr. Hogan: The same as before. That is not a complete record, and the witness herself is not able to identify—that is, the record itself has no identification as to date.

The Court: Objection overruled.

Mr. Hogan: Exception.

(The page described above is handed to the Reporter, marked Government Exhibit No. 53, and filed with the record.)

Q. How long did Robinson stay at your home that day, Mrs. Peiffer?

A. About 15 minutes.

Q. Did you have any conversation with him?

A. Nothing much—he just wanted a room and a garage to put his car in, is all.

Q. What car did he have?

A. It was a Ford.

Q. With reference to the car that Officer Bright took away from there, was that the same automobile?

A. That is right.

Q. The one that Robinson drove there?

A. That is right.

Q. Did you have any conversation with him at the time he rented the room?

880 A. No. He just asked for a room, and I let him have a room; and that is all.

Q. Did you have any conversation with him relative to the time he would return that night?

A. Yes; he said he would be in late and that he wanted to know how he would get in and I told him that I would leave the door open for him.

Q. Did you have any conversation with him in connection with his employment? Did he tell you what he was

Testimony of Mrs. John Peiffer

doing?

A. No.

Mr. Inman: That is all.

Cross-examination by Mr. Hogan.

Q. Mrs. Peiffer, where were you when you first saw Robinson?

A. I was cleaning the sidewalk off with a hose.

Q. Did you then operate a filling station?

A. Oh no, a tourist home.

Q. A tourist camp?

A. No; a tourist home. Not a camp.

Q. And was that located in the main part of Springfield?

A. That's right. It is on 40—a national highway.

881 Mr. Inman: U. S. Highway 40?

Witness: That's right.

Q. Did you have a row of garages in connection with your tourist home?

A. No. I just had one.

Q. Did you have a car of your own?

A. No.

Q. Did any other guests have cars there at that time?

A. No. They had them, but they always told me if anybody came in and insisted on a garage I could let them have it as long as I watched their stock that was in the garage.

The Court: Mrs. Peiffer, how long did he stay there? Did he come back that night?

Witness: No. He was there about 15 minutes; that's all.

The Court: And he did not return that night?

Witness: No.

J. L. BOWLING was called as a witness for the government and, after having been first duly sworn, was examined and testified as follows:

Testimony of J. L. Bowling

Direct Examination by Mr. Inman.

Q. State your name to the jury?

882 A. Joseph L. Bowling.

Q. Where are you employed?

A. At the Waldorf Astoria.

Q. Is that a hotel?

A. It is a hotel in New York City.

Q. In what capacity are you employed there?

A. Front Office Manager.

Q. How long have you been employed there at that hotel?

A. Since August 17, 1931.

Q. In 1936 were you employed by that hotel?

A. Yes I was.

Q. Are you acquainted with the record system of that hotel?

A. Yes, sir.

Q. As Front Office Manager, do you have under your control and your custody the guest registration cards?

A. Yes, sir.

Q. Are the original registration cards for the year 1934 and 1935 in existence?

A. No, sir; they have been destroyed.

Q. Were they destroyed in the usual course of business?

A. No. A decision was made to destroy all of the cards about a year ago.

883 Q. I will show you this photostat and ask you to tell the jury if you recognize that?

A. Yes, I do.

Q. What is it?

Mr. Hogan: That is objected to until this witness is further identified.

The Court: Until this witness is further identified?

Mr. Hogan: Yes, Your Honor.

The Court: How do you mean, further identified? He has given his name.

Mr. Hogan: They have not shown his address.®

Q. What is your address?

Testimony of J. L. Bowling

A. My home address is 861 East 21st Street, Brooklyn, New York.

Mr. Inman: Is his address properly identified?

Mr. Hogan: It is now.

Q. What is that?

A. Registration card—photostatic copy.

Q. Of what hotel?

A. Waldorf Astoria.

Q. Are those photostats made in the usual course of business?

A. Yes, sir; they are.

Q. What is the date of that registration card?

884 A. It looks like December 30, 1934.

Q. And what is the name of the guest?

A. T. M. Warner.

Q. What address?

A. The address I can't make out except the word "Drive".

Q. Come over here in the light and look at it?

A. I still can't read it.

Q. I will ask you if that is "Owentsia"?

A. I couldn't say that, honestly.

Q. All right, resume your seat. What is the city shown as the residence of the guest?

A. Oak Forest, Illinois.

Q. See if that is "Lake Forest"?

A. That's right. I am sorry—Lake Forest.

Q. I will ask you to file that card with your testimony as government Exhibit No. 54?

Mr. Hogan: That is objected to because it has not been shown any connection between that card and this defendant.

Mr. Inman: That will be established.

The Court: Mr. Bowling, was it the usual course of business for your hotel at that time to make guest cards as regular records of the hotel?

885 A. Yes, sir, it was.

The Court: And was the original of that card made in the usual course of business?

Witness: Yes, sir.

Testimony of J. L. Bowling

The Court: At the time when the act occurred? That is, when the guest registered?

Witness: Yes, sir.

The Court: Counsel assures us that there will be a connection made. Of course, if there is no connection shown, the Court will sustain your objection and the card will have no place in this case. The jury will understand that it is being filed subject to it being connected up later in some way by testimony to the case itself.

(The above described registration card was handed to the Reporter, and marked Government Exhibit No. 54, and filed.)

Cross-examination by Mr. Hogan.

Q. You do not know who wrote that card or who signed for that?

A. No, sir; I do not.

Mr. Hogan: That is all.

886. WILLIAM TOUCHER was called as a witness by the government and, after having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Inman.

Q. State your name to the jury?

A. William Toucher.

Q. Where do you live?

A. Hotel St. George, in Brooklyn.

Q. New York?

A. Yes, sir.

Q. Are you employed at the St. George Hotel?

A. I am.

Q. In what capacity?

A. Assistant Manager.

Q. As Assistant Manager do you have in your custody and under your control the guest registration cards of the St. George Hotel?

The Court: Where is that? In Brooklyn?

Testimony of William Toucher

Witness: Yes, sir.

A. Yes, sir.

Q. Were you employed by that hotel in January of 1935?

A. Yes, sir; I was.

887 Q. In what capacity?

A. As Credit Manager.

Q. Are you familiar with the records of that hotel and the guest registration cards of that hotel?

A. Yes, sir.

Q. Are the original records of 1935, the original guest registration cards, in existence?

A. No, sir, they have been destroyed.

Q. Was it part of your regular practice at that hotel in 1935 to require the execution of a guest registration card?

A. Yes, sir.

Q. I show you this photostatic copy and ask you to tell the jury what that is?

A. It is a registration in the name of T. Morton Wallace, 320 North Ridgland Avenue, Oak Park, Illinois.

Q. What is the date of that registration?

A. January 10, 1935.

Q. Is that a part of the records, that is, the original of that, is that a part of the records of the Hotel St. George?

A. Yes, sir.

Q. Made in the usual course of business?

A. Yes, sir.

Q. Was the original made of that at the time of 888 the registration of that guest?

A. Yes, sir.

Q. Can you tell from that the length of time that guest stayed at the hotel?

A. No, sir, I can't.

Q. Did you see the guest, T. Morton Wallace?

A. No, sir.

Q. I will ask you to file this with your testimony as government Exhibit No. 55?

A. I will.

Testimony of William Toucher

Mr. Hogan: The same objection, unless it is further connected up.

The Court: All right.

(The above described document is handed to the Reporter, marked government Exhibit No. 55, and filed.)

Cross-examination by Mr. Hogan.

Q. How do you spell your name?

A. T-o-u-c-h-e-r.

Mr. Hogan: That is all.

ALBERT E. PATTERSON was called as a witness for the government and, after having been first duly sworn, was examined and testified as follows:

889 Direct Examination by Mr. Inman.

Q. State your name to the jury?

A. Albert E. Patterson.

Q. Do you live at 60 School Street, in Boston, Massachusetts?

A. I do.

Q. In what business are you engaged at the present time?

A. I am an Engineer for the United States Navy.

Q. In April 1935, where were you employed?

A. I was in the automobile business, at Woodhaven New York, for Patterson & Smith, Inc.

Q. I will show you a paper and ask you to tell the jury what that is?

A. That is an order for a car, a Plymouth four-door sedan, signed by Leslie K. Burgess.

Q. Of what company is that a record?

A. The Patterson & Smith, Inc., for whom I worked.

Q. Is that one of the usual records of that company?

A. Yes, sir.

Q. By whom was it made?

A. It was made by Leslie K. Burgess and witnessed

Testimony of Albert E. Patterson

by myself.

890 Q. At the time the transaction occurred?

A. At the time he ordered the car.

Q. What was the date of that order?

A. April 5, 1935.

Q. And what car was ordered?

A. A Plymouth four-door sedan.

Q. At what price?

A. \$799.00.

Q. And how was that price arrived at?

A. \$784.50 for the automobile, and \$14.50 for license plates.

Q. Was any cash payments made?

A. A cash deposit on placing the order, of \$150.00.

Q. Leaving a balance of what?

A. \$649.00.

Q. Was that signed by the purchaser, Leslie K. Burgess in your presence?

A. It was.

Q. Did you sign it as a witness?

A. I did.

Q. Did you deliver the car to him?

A. At that time?

Q. At any time?

A. I did deliver a car to him.

Q. I will show you this record, and ask you what
891 that is?

A. That is a record of the particular automobile by serial number that was delivered to him the following day, April 6th.

Q. 1935?

A. 1935.

Q. What automobile was delivered?

A. A Plymouth four door sedan No. 2404540, that is the serial number. Motor No. PJ11573.

Q. How was the balance, the \$649.00, paid?

A. I couldn't tell you. Cash or a certified check was the agreement and evidently it was paid in either of those two ways, which, I would not know.

Q. I will ask you to file the order dated April 5, 1935,

Testimony of Albert E. Patterson

as government exhibit No. 56; and the record of the delivery of the automobile on April 6, 1935, as government Exhibit No. 57?

Mr. Hogan: I object to government Exhibit No. 57 being introduced, because it has not been established that that record was kept in the regular course of business.

Mr. Inman: I submit it hasn't.

Q. With reference to that record, was that a part of the records of Patterson & Smith, Inc.?

A. This envelope file record was always made out immediately upon receipt of any order.

892 Q. Who made that out?

A. I did; personally.

Q. Was that made out in the usual course of business?

A. Yes.

Q. At the time the transaction occurred?

A. Immediately after the placing of the order.

The Court: And it was a part of the usual course of business of that company to make such a record?

Witness: Yes, sir.

Mr. Hogan: If Your Honor please, it was always the custom, but he did not say it was done in this particular case.

Mr. Inman: We have him here in this particular case.

The Court: Was it done so, in this particular case?

Witness: Yes, Your Honor.

Q. Are you able at this time to identify Leslie K. Burgess?

A. I am not.

(The documents referred to were handed to the Reporter, marked Government Exhibits Nos. 56 and 57, and filed.)

Mr. Hogan: No questions.

893 FRED SCHMIDT was called as a witness by the government and, after having been first duly sworn, was examined and testified as follows:

Testimony of Fred Schmidt

Direct Examination by Mr. Inman.

Q. State your name to the jury?

A. Fred Schmidt.

Q. Where do you live?

A. 4542 Fortieth Street, Long Island, New York.

Q. Where are you employed?

A. O'Brien & Walsh, at 40th Street.

Q. In what capacity?

A. Superintendent.

Q. Superintendent of what?

A. Thirty-six six-room family houses.

Q. Did you have charge of the premises at 4547 Fortieth Street, Long Island, New York?

A. That is right.

Q. And did you have charge of those premises in the year 1935?

A. That is right.

Q. Is there an apartment in that building known as Apartment No. 3, rear?

A. Yes.

Q. In April of 1935, I will ask you whether or not you had a tenant by the name of Mr. and Mrs. Burgess?

A. I knew a tenant by the name of Mr. Burgess.

894 Q. Mr. Burgess?

A. That is right.

Q. How long did Mr. Burgess live at that apartment, Mr. Schmidt?

A. About 4 weeks.

Q. When he left did he give notice?

A. No, he did not report to the office before the check-out.

Q. Have you seen that person known to you as Mr. Burgess since?

A. That's right.

Q. Is he in the court room?

A. That is Mr. Burgess (pointing to Robinson.).

Q. Thomas Henry Robinson Jr.?

Mr. Hogan: That is certainly suggestive.

Mr. Inman: He pointed right at him.

Testimony of Fred Schmidt

Mr. Hogan: He pointed toward the window.

Q. Will you get down close?

A. That is Mr. Burgess, now Mr. Robinson (indicating).

Mr. Inman: Is that all right?

Mr. Hogan: That is better than he did before.

The Court: If there is any question about it, let the witness step down and touch him. Do you want the witness to do that?

895 Mr. Hogan: No. That is all right.

Mr. Inman: That is all.

The Court: Is that the only name that you knew, or did you know by his first name?

A. That is the only name I knew about.

Mr. Hogan: No cross-examination.

RALPH CRIBARI was called as a witness for the government and, after having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Inman.

Q. State your name to the jury?

A. Ralph Cribari.

Q. Where do you live?

A. 21 Birch Street, Mt. Vernon, New York.

Q. In what business are you engaged?

A. I am connected with the Rupert Brewery.

Q. In the summer of 1935 were you employed?

A. No.

Q. Where did you live in the summer of 1935?

A. In a cottage on Dearborn in Rye, New York.

Q. Is that Oakland Beach?

A. Yes, sir.

896 Q. Did you have any neighbor there?

A. I did.

Q. I will ask you whether or not there was a neighbor there known to you as Mr. Burgess?

A. There was, yes.

Testimony of Ralph Cribari

Q. Did you know his first name?

A. Leslie.

Q. How long did that Leslie Burgess live as a neighbor to you?

A. Well as far as I can remember, sometime in July he moved in and some time in August he moved out.

Q. How long were you there at the beach?

A. The whole summer, from June 15th until September 15th.

Q. Did you know that Leslie K. Burgess well or not?

A. Well just through my acquaintance with him there. I would say real well.

Q. Did you associate with him much or not?

A. Quite a bit.

Q. What association did you have?

A. Went swimming with him; and we went to the Polo Grounds to see a ball game. And we played tennis together. I went out at night on frequent occasions with him.

Q. Did that Leslie K. Burgess tell you what his
897 business was?

A. Yes, sir, he did.

Q. What did he say?

A. He said he was with the Johns Manville Company, of Chicago and that he had taken a six months leave of absence.

Q. Have you seen that person since?

A. Only in the newspapers.

Q. Is he in the court room today?

A. Yes, sir.

Q. Will you point him out?

A. The gentleman sitting next to Mr. Hogan.

Mr. Inman: Let the record show that Thomas Henry Robinson Jr. is sitting next to Mr. Hogan.

A. (Continuing) I would not know him under that name.

Q. Did you have occasion to talk to him?

A. Yes; quite often.

Q. Did you discuss the topics of the day?

A. Yes.

Testimony of Ralph Cribari

Q. What was his general appearance and impression?

A. Well, personally, I thought he was a very nice fellow, and I was glad that I had made his acquaintance at the time.

Q. Did you discuss business conditions?

898 A. I don't recall that.

Q. What did you discuss, Mr. Cribari?

A. We talked about sports, and we talked about tennis. I remember that is how we got involved in playing tennis. Baseball. Oh nothing otherwise, I don't think.

Q. I will ask you did he have with him any woman known as his wife, Mrs. Burgess?

A. He did.

Q. Did you know her?

A. I did.

Q. I will show you this picture and ask you if you recognize that?

A. I do.

Q. Who is that?

A. So far as I know, Jean Burgess.

Q. Was she known to you as Jean?

A. Well, I would not remember the first name. I thought it was Jean.

Q. That is the woman known to you as the wife of Robinson?

A. As Mrs. Burgess.

The Court: Has that picture been introduced?

Mr. Inman: It hasn't been identified yet. I will ask the stenographer to mark this picture government

899 Exhibit No. 58, for identification.

The Court: Let the record show that the witness looked at the picture.

(The picture above identified was handed to the Reporter and marked Government Exhibit No. 58 for identification.)

Cross-examination by Mr. Hogan.

Q. Mr. Cribari, how often would you say you went to the Polo Grounds or the Yankee Stadium?

A. Just once, I think.

Testimony of Ralph Cribari

Q. I mean in company with the man you knew as Leslie Burgess?

A. That's right.

Q. That, of course, was during the baseball season?

A. The Giants were at home.

Q. Where are the Polo Grounds located in New York for the purpose of the record here?

A. It is in the Bronx around 149th Street, I believe. I may be wrong about that.

Q. How far from the scene of this beach cottage residence did you and the man you knew as Burgess go to the polo grounds at New York?

A. About 25 miles—20 or 25 miles.

900 Q. What method of transportation did you and Burgess use to get from the beach to the polo grounds?

A. We had Mr. Burgess' Plymouth.

Q. Where else did I understand you to say you and he went?

A. We played tennis at the Rye High School grounds on one or two occasion. One night we went to the village of Tuckahoe to a night club.

Q. Did you go to any other night club with him?

A. We were out a few times, to beer gardens around the town there.

Q. How far is Rye from New York proper?

A. What do you call "New York proper"? The Bronx?

Q. You know more about it than I do.

A. From Rye to New York it is 20 or 25 miles—that is to the Bronx line. When they figure the distance they usually figure to Columbus Circle, about 30 miles.

Q. Well, Rye is not far from the main residence area, is it?

A. No.

Q. Did you and Burgess go in down town Manhattan to any of those places?

A. Never.

Q. These beer gardens, were they frequented by 901 members of the public in large numbers?

A. They were open to the public. I would not say

Testimony of Ralph Cribari

anywhere they were very crowded.

Q. And in going with the man you knew as Burgess to and from with him, you necessarily passed by several officers of the law, didn't you—traffic officers and others?

A. No. When we went to Tuckahoe or the polo grounds just around the grounds you very seldom saw one. They may have one or two in the town. None were stationed around where we were.

Q. You mean they did not have any police stationed around in New York City?

A. I said at Tuckahoe and the polo grounds.

Q. There were several policemen stationed around the polo grounds?

A. I wouldn't be surprised.

Q. They usually are?

A. Not to my knowledge.

Q. Haven't you seen police officers at the ball games?

A. Yes. You said stationed there.

Q. Yes?

A. They were fans just like I was.

Q. I mean in uniform?

A. Yes, I have seen plenty in uniforms as fans.

902 Q. Was Burgess dressed in ordinary street clothes?

A. At the time we went to the polo grounds?

Q. Yes.

A. I couldn't say.

Q. Do you know what he had on?

A. He might have had on a sport jacket. He often wore one.

Q. Did he have a moustache?

A. No.

Q. Did he use any method to conceal his identity?

A. He did not.

Redirect Examination.

Q. Did you know he was Thomas Henry Robinson, Jr.?

A. No, sir, I did not.

Q. That was concealed from you, was it not?

A. Yes, sir.

Testimony of Ralph Cribari

Recross-examination by Mr. Hogan.

Q. Were you acquainted with any FBI Agents?

A. No, sir.

Q. I will ask you to reflect and think back and try to remember if you weren't at that time?

A. You mean did I know any at that time?

903 Q. Yes?

A. No, sir.

Q. Had you read anything at all about the Stoll kidnapping case?

A. Well I remmebered it very casually; yes.

The Court: Members of the Jury, we will recess for lunch. During this intermission do not discuss this matter among yourselves or with anyone or permit anyone to talk about it in your presence. We will convene at 2 o'clock.

Convened pursuant to adjournment and continued with the trial as follows:

LOUIS O. DOTY was called as a witness by the government and, after having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Inman.

Q. State your name to the jury?

A. Louis O. Doty.

Q. Where do you live?

A. 4344 193d Street, Flushing, Long Island, New York.

Q. Where are you employed?

A. Hotel New Yorker.

904 Q. In what capacity?

A. Credit Manager.

Q. How long have you been so employed?

A. Since August 1931.

Q. You were then Credit Manager of that hotel in 1935?

A. That is correct, sir.

Q. And 1934?

A. That is correct, sir.

Testimony of Louis O. Doty

Q. Are the original guest registration cards for that hotel for the years 1934 and 1935 in existence today?

A. They are not.

Q. What happened to them?

Mr. Hogan: Before this witness testifies further, I want to object to his testimony because his address is shown to be different from that furnished on the list.

The Court: What is the address shown?

Mr. Hogan: 4384 84th Street, Flushing, Long Island, Queens County, New York, and he says 193d Street.

Mr. Inman: Do you live on 193d Street?

Witness: Yes, 4344 193d Street.

The Court: What does the list show?

Mr. Inman: It apparently shows 84th Street.

905 The Court: All right. The witness may be excused.

JOHN G. CONTAT was called as a witness by the government and, after having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Inman.

Q. Tell the jury your name?

A. John G. Contat.

Q. Where do you live?

A. At the Ritz Carlton Hotel.

Q. New York, New York?

A. Yes.

Q. Are you employed by that hotel?

A. Yes, sir.

Q. In what capacity?

A. Manager.

Q. As Manager of that hotel, do you have under your control and in your custody the records of that hotel?

A. I have.

Q. Is it a part of the customary and usual business of that hotel to have guest registration cards executed?

A. Yes, sir.

Q. Are those registration cards executed in the usual

Testimony of John G. Contat

course of business?

906 A. Yes, sir.

Q. At the time the guest registers?

A. That is right.

Q. I will show you that record and ask you to tell the jury what it is?

A. It is one of our registration cards for 1935.

Q. Of what hotel?

A. The Ritz Carlton Hotel in New York.

Q. What is the date of it?

A. January 8, 1935.

Q. And what does that record disclose?

A. The name of the registrant, Morton Wallace.

Q. How do you spell the first name?

A. M-o-r-t-o-n.

Q. And what address did that guest card give?

A. 320 North Ridgeland Avenue, Oak Park, Illinois.

Q. To what room was he assigned?

A. 302 at the rate of \$6.00 a day.

Q. Does the card show by what firm or corporation that guest was employed?

A. Yes. "Remarks: Chicago Board of Trade."

Q. What does that mean?

A. It means that the gentleman in question was connected with the Chicago Board of Trade.

Q. From his own statement?

907 A. Yes, sir, it is in his handwriting.

Q. Was that card made as a part of the usual business of the Ritz Carlton Hotel?

A. That is right.

Q. Made by the guest at the time he registered?

A. That's right.

Q. Is it kept as a part of the regular records of that hotel?

A. It is.

Q. I will ask you to file that card with your testimony as government Exhibit No. 59?

A. All right.

Q. Did you see that guest yourself?

A. No, sir.

Testimony of John G. Contat

(The registration card above described was handed to the Reporter, marked Government Exhibit No. 59, and filed).

Cross-examination by Mr. Hogan.

Q. You don't know who registered under that name, do you, Mr. Contat?

A. No, sir.

Mr. Hogan: That's all.

908 MRS. LOUISE VAN HOUTEN was called by the government as a witness and, after having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Inman.

Q. State your name to the jury?

A. Mrs. Louise Van Houten.

Q. Where do you live?

A. 237-06 93d Avenue, Queens Village.

Q. Is that in Queens County, New York?

A. Right.

Q. How long have you resided at that address?

A. It will be 18 years this January.

Mr. Hogan: I object to this witness testifying because the name is given in the list is Mrs. Elijah S. Van Houten.

Witness: That is my marriage name, Elijah S.

The Court: You mean the name you last gave is your marriage name?

A. My married name is Mrs. Elijah S. Van Houten Jr.

The Court: All right.

Q. Is the place you live close to the premises known as 237-04 93d Avenue?

A. Yes; right next door.

909 Q. In 1935 I will ask you whether or not there were people living at 237-04 93d Avenue known to you as Mr. and Mrs. Burdin?

A. Yes, sir.

Q. What part of 1935 did Mr. and Mrs. Burdin live there?

Testimony of Mrs. Louise Van Houten

A. It was in the fall.

Q. How long did they live there.

A. Approximately a month and a half, or two.

Q. Can you tell the jury just when they moved out?

A. The Monday before Thanksgiving.

Q. Did you see Mr. and Mrs. Burdin there?

A. Yes, sir; I did.

Q. Did you have occasion to have any conversation with them?

A. Mrs. Burdin used to come into my home very frequently and talk with me a lot, and she told me about her folks back in California.

Mr. Hogan: That conversation is objected to.

The Court: Objection sustained.

Mr. Inman: That is, just the conversation with Mrs. Burdin?

The Court: Yes.

Q. Did you see Mr. Burdin?

910 A. Yes, sir.

Q. Have you seen that person since?

A. No; I have not.

Q. Is he in the court room now?

A. No, I don't see him in here.

Q. All right. Now did anyone else come there with the Burdins or frequent that place?

A. It was only Mr. and Mrs. Burdin that I knew.

Q. Did anyone else visit them? Did you know any other visitors there?

A. No.

Q. I show you government exhibit No. 58 and ask you if you recognize that picture?

A. It is Mrs. Burdin. That is the woman that lived next to me.

Q. And since then have you seen any of the other persons who were there?

A. No.

The Court: What was the name of that street?

Witness: 237-06 93d Avenue.

The Court: All right.

Mr. Hogan: No questions.

Testimony of Emil Berg

911 EMIL BERG was called as a witness by the government and, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Inman.

Q. State your name to the jury?

A. Erich Emil Berg—they have it as “Emil Berg” but my full name is Erich Emil Berg.

Q. Where do you live?

A. 9 Pilling Street, New York.

Q. Where are you employed?

A. Forest Hills Fireproof Storage Company.

Q. How long have you been employed by the Forest Hills Fireproof Storage Company?

A. Going on 18 years.

Q. In what capacity are you employed there?

A. Accountant.

Q. Do you have the custody of the records of that company?

A. That's right.

Q. What is that record I show you?

A. It is really a storage contract.

Q. Is that a part of the records of your company?

A. It is the original record we use on storage **912** coming into the place.

Q. Is that record made in the usual course of business?

A. Yes, sir; it is the contract between the customer and the company.

Q. And was that record executed in the usual course of business by your company?

A. That is right.

Q. At the time of the occurrence recorded thereon?

A. That is right.

Q. By whom was it executed?

A. Myself and the party who delivered it there.

Q. What is the date of that?

A. April 12, 1935.

Q. And tell the jury what that is?

A. Well, that date we received a filing cabinet for storage.

Testimony of Emil Berg

Q. Under what name did you receive that filing cabinet?

A. J. H. Baker.

Q. Did you personally handle that transaction?

A. The entire transaction.

Q. Have you seen that J. H. Baker since?

A. Yes.

Q. Is he in the court room?

913 A. Yes, sir.

Q. Point him out, please?

A. That is Robinson.

The Court: Well, for the purpose of the record, designate him some way?

Witness: Between those two gentlemen.

The Court: Sitting next to counsel, you mean?

Witness: Yes, sir.

Q. When you first saw Robinson you then knew as J. H. Baker, where was he?

A. He came into the front entrance of our place and he inquired whether we would store a filing cabinet, and I asked to look at it and he pulled his car down to the side of the building, that was before it was concreted there, and so I helped him with the filing cabinet out of his car and took it in the side entrance; and then I had him sign this contract; and I asked him if he wanted to store it in one name or two names; and then he requested to please allow Mrs. J. H. Baker or Mrs. Elizabeth Baker to move it or have access to the cabinet.

Q. What other words did he add to the request that someone else have it?

A. Only upon written order from him, and then I added on that "Upon written order from me".

Q. Mrs. J. H. Baker and Mrs. Elizabeth Baker
914 could get it only on order from him?

A. Yes.

Q. Did he sign that contract?

A. Yes, in two places.

Q. In your presence?

A. Yes, sir.

Q. What name is signed?

Testimony of Emil Berg

A. "J. H. Baker".

Q. In both places?

A. Yes, here and here (indicating).

Q. What was the storage on that filing cabinet?

A. 50c a month.

Q. Was that paid?

A. Yes; he paid 12 months in advance and he gave me \$6.00.

Q. Did he return to that filing cabinet at any time?

A. Yes, I remember him coming back at a later date. Much later. It was probably about a year because I remember looking into our accounts receivable to see if he owed us any money on it.

Q. To see if he had paid?

A. Yes, we didn't want him to get anything out without getting our money.

915 Q. What did you find?

A. It had been just a year and he had paid in advance, and so I didn't ask him for any money.

Q. You didn't?

A. No.

Q. At that time did he go into that filing cabinet?

A. Yes.

Q. Did you go with him?

A. Yes, sir, I took him to the mezzanine floor, that is between the first and second floors.

Q. And what happened?

A. He opened the filing cabinet and took out a package about that long and about that wide (Indicating) wrapped in brown paper.

Q. Did he take it with him?

A. Yes, and went away and I haven't seen him since.

Q. Until this trial?

A. Yes.

Q. Will you file this contract you said he signed with your testimony and make it a part of the record?

A. I will.

(The contract described was handed to the Reporter, marked government Exhibit No. 60, and filed.)

Mr. Hogan: No cross-examination.

Testimony of Mrs. Anna S. Webb

916 MRS. ANNA S. WEBB was called by the government as a witness and, after having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Inman.

Q. State your name to the jury?

A. Anna S. Webb.

Q. Where do you live?

A. Los Angeles, California.

Q. What address?

A. 6427 West 5th Street.

Q. In what business are you engaged?

A. Real Estate Broker.

Q. How long have you been a Real Estate Broker?

A. I have been in the real estate business all my life, but I have been a broker since about 1931.

Q. In the years 1934 and 1935 were you engaged in that business in Los Angeles?

A. Yes I was.

Q. Did you have occasion to meet Mr. and Mrs. Burgess?

A. Yes I did.

Q. Under what conditions did you meet Mr. and Mrs. Burgess?

917 A. Well I ran an ad like this: "Let Ann Webb place you: Fine homes for fine people", and he read that ad and called me up.

Q. As a result of that telephone call ~~where~~ where did you go?

A. To the Biltmore Hotel.

Q. Did you meet Mr. Burgess there?

A. Yes, sir.

Q. Do you recall his name?

A. Leslie K. Burgess.

Q. How did you know that was his name?

A. He told me so.

Q. Have you seen him since?

A. Yes.

Q. Is he in the court room?

A. Yes.

Q. Where is he?

Testimony of Mrs. Anna S. Webb

A. Right there.

Q. Where?

A. Between those two gentlemen.

Mr. Inman: Let the record show it is Robinson.

Mr. Hogan: I object to that.

The Court: Well I think the record has to show it.

918 Mr. Hogan: All right.

Q. What conversation did you have with him at the Biltmore?

A. I told him that these houses belonged to friends of mine and they were old time acquaintances, and I said I would have to have references; and so I went down there and he kidded me into the idea that I did have references.

Q. That you had references?

A. Yes, but I found out I didn't.

Q. Where did he tell you he was from?

A. Highland Park, a suburb of Chicago; and that he was an attorney and that he was out here in the interest of his father in the Spreckles Estate.

Q. What is the Spreckles Estate?

A. It is a huge corporation—sugar mostly.

Q. Was it a well known estate in California?

A. Yes it is. And I said to him, "The big interests are in San Francisco and San Diego and if you want to be in the big interests you ought to go there." And he said, "Oh no, my father isn't an heir, he has a business interest and I want to handle this quietly." So I carried him around for about a week and even the niece of the owner of this house in Santa Monica, she was sold on his references too—

919 Mr. Hogan: I object to that.

The Court: Objection sustained.

Q. We want to know just what you did. Did you see him often while you were dealing with him?

A. Every day, until I got him placed.

Q. Did you rent him a place?

A. Yes, 346 16th Street, in Santa Monica.

Q. At what rental?

A. \$150.00.

Q. I will show you this card and ask you if that is one

Testimony of Mrs. Anna S. Webb

of your business cards?

A. Yes.

Q. With reference to the reverse side I will ask you if that is a receipt for \$150.00 you gave to the man you knew as Burgess?

A. Yes; I wrote that.

Q. Dated January 21, 1935, isn't it?

A. Yes.

Q. "Received \$150.00 of Mr. Leslie Burgess for one month's rent of 346 16th Street, Santa Monica, pays to February 23, 1935". Is that right?

A. Yes.

Q. And you signed it and gave this to Burgess?

A. Yes.

920 Q. I will ask you to introduce that card with your testimony as government Exhibit No. 61?

A. I will.

(The above described card was handed to the Reporter, marked Government's Exhibit No. 61, and filed.)

Q. Now at the time you were dealing with the man you knew as Burgess, did he tell you what type home he was looking for?

A. Yes, they wanted a secluded home, preferably walled in, and they didn't want close neighbors.

Q. Did you discuss that with both Burgess and his wife?

A. Yes, and Mrs. Burgess said—

Mr. Hogan (Interrupting): Objection.

By the Court: Objection sustained.

Q. Were the statements you were about to relate made in the presence of this defendant?

A. Yes.

Q. And in connection with the house they were about to rent?

A. Yes.

Q. Then I will ask you to relate those statements?

Mr. Hogan: Same objection.

921 The Court: Sustained only as what Mrs. Burgess

Testimony of Mrs. Anna S. Webb

said.

Mr. Inman: Yes.

Q. I will show you government Exhibit No. 58 and ask you if you recognize that picture?

A. Yes.

Q. Who is that?

A. The lady who represented herself to be Mrs. Burgess.

Mr. Inman: That is all.

Cross-examination by Mr. Hogan.

Q. You say that he kidded you into believing you had references?

A. Yes, he was so brilliant. He had the answers to every question before you could ask it. He talked so intelligently, and he sold me the idea. I don't often fall so easily, but he got me.

Q. You mean he dazzled you?

A. He was plenty smart. I think I have about average intelligence myself, but he was head and ears over me.

Q. He sold you on the idea that he was a big business man?

A. Yes, sir, that he was somebody, and I certainly **922** believed it and so did the owner.

Q. You thought he really had some connection with the Spreckles Estate, didn't you?

A. I certainly did or I would not have been hauling him around all of that time.

Q. He was a pretty nice looking fellow?

A. Yes, sir; and very courteous and considerate, and he was 100% as far as I was concerned. I was horrified when this came up—perfectly horrified.

Q. He had a way that went over with the ladies, didn't he?

A. He was plenty smart. I have seen lots of crazy people, and I have had lots to do with them, that is one of my forms of welfare work—

Mr. Inman: Objection.

The Court: Objection sustained. The jury will not consider that last statement.

Testimony of Mrs. Anna S. Webb

Q. Was he well dressed?

A. Yes, sir.

Q. Well mannered?

A. Yes, indeed. He was suave, and his manners were perfect. He was A-1.

Q. Are you married?

A. Yes.

Q. Were you married then?

923 A. Yes, sir.

Q. Well, didn't you fall a little bit for him?

A. No, except for his ability, because I have been out there for 37 years—I told him at that time I had been there 28 years—and I told him I had good references. He said that is what he wanted. He wanted an old-timer to place him. I was more interested in my clients than in one tenant because that is where my money was, in my clients or, rather, the owners of these houses.

Q. And he swept you completely off of your feet?

A. Indeed, and I tell you he was as smart as they make them. You couldn't beat him for a second.

Mr. Hogan: That is all.

924 HARRY STREET JENKINSON called as a witness in behalf of the Government, being duly sworn, was examined and testified as follows:

Direct Examination by Mr. Inman.

Q. State your name to the jury.

A. Harry Street Jenkinson.

Q. Where do you live?

A. 259 N. Swall Drive, Beverly Hills, California.

Q. Where are you employed?

A. At the Ambassador Hotel.

Q. Where is it located?

A. 3400 Wilshire Boulevard, Los Angeles, California.

Q. In what capacity are you employed at that hotel?

A. As an Assistant Manager.

Q. As Assistant Manager, do you have custody of the

Testimony of Harry Street Jenkinson

guest registration cards?

A. I do, sir.

Q. Is it a part of the business of the Ambassador Hotel to require the execution of guest registration cards?

A. Yes, sir.

Q. I'll show you this card and ask you if that is a part of the records of your hotel.

A. It is, yes.

925 Q. Was that card made in the usual course of business at your hotel?

A. Yes, sir.

Q. At the time of the registration of the guest?

A. At the times of the registration, yes.

Q. And kept as a part of the regular records of your hotel?

A. That is correct, sir.

Q. What does that record disclose?

A. Beg your pardon?

Q. What does that record show?

A. It shows that Neill Morton and wife, 16012 Hillside Avenue, Hollis, Long Island, New York. I am incorrect, that's Neill Martin instead of Morton.

Q. How do you spell it.

A. M-a-r-t-i-n—registered at our hotel January 17th, 1935, at 8:04 a.m.

Q. Does that record show how long they remained at that hotel?

A. This particular record does not, sir.

Q. Do you have with you a record that does disclose that?

A. I have, yes.

Q. I will ask you to file that guest registration card with your testimony as Government Exhibit No. 62.

926 A. I do.

(The guest registration card referred to was handed to the reporter and filed as Government Exhibit No. 62.)

Q. What other records do you have in connection with Neill Martin and his wife?

Testimony of Harry Street Jenkinson

A. I have a copy of his statement, ledger card, showing his stay as of January 17th, 1935, which indicates that he made a stay with us of one day only, checking out on January 18th, 1935.

Q. Did you register that guest?

A. I did not, sir.

Q. Did you see him at all?

A. No, sir.

Q. That you know of?

A. Not to my knowledge.

Mr. Inman: You may ask the witness.

Mr. Hogan: No questions.

CLARENCE CHRISTIAN SMITH called as a witness in behalf of the Government, being duly sworn, was examined and testified as follows:

Q. Tell the jury your name.

A. Clarence Christian Smith.

Q. Where do you live?

A. 4307 Seventh Avenue, Los Angeles, California.

927 Q. Where are you employed?

A. Biltmore Hotel, 515 S. Olive Street, Los Angeles, California.

Q. In what capacity are you employed at the Biltmore Hotel?

A. Credit Manager.

Q. How long have you been Credit Manager?

A. Since October, 1938.

Q. As Credit Manager, do you have in your custody and under your control the records of the guest registrations of the hotel?

A. Yes, sir.

Q. I'll show you this paper and ask you if that is part of the records of the Los Angeles, Biltmore Hotel.

A. Yes, sir.

Q. It is part of the record?

Testimony of Clarence Christian Smith

A. Yes, sir.

Q. Was that record made in the usual course of business of your hotel?

A. Yes, sir.

Q. Was it kept in the usual course of business of your hotel?

A. Yes, sir.

Q. Made at the time of the registration of the guest?

A. Yes, sir.

938 Q. Will you examine the last entry on that page?

A. Yes, sir.

Q. And tell the jury what it is?

A. It is the registration of Leslie Burgess and wife.

Q. Talk loud, so the jury can understand you.

A. It is the registration showing the name of Leslie Burgess and wife.

Q. What address?

A. Highland Park, Illinois.

Q. On what day?

A. January 18th, 1935.

Q. What room was assigned to them?

A. Occupying Room 8232.

Q. I will ask you to file that record with your testimony as Government Exhibit No. 63.

A. I do.

(The document referred to was handed to the reporter and filed as Government Exhibit No. 63.)

The Court: Was it part of the regular business of your hotel to keep such a record?

The Witness: Yes, sir.

Q. Did you register that guest known to you as Leslie Burgess?

A. No, sir.

929 Q. Do you know how long that guest remained in your hotel?

A. No, sir.

Mr. Inman: You may ask the witness.

Mr. Hogan: No questions.

Testimony of Roy McMains

ROY McMAINS called as a witness in behalf of the Government, being duly sworn, was examined and testified as follows:

Direct Examination by Mr. Inman.

Q. State your name to the jury?

A. R. L. McMains.

Q. Where do you live?

A. 714 Ocean View, Monrovia, California.

Q. Where are you employed?

A. At the Hotel Constance in Pasadena.

Q. How long have you been employed at that hotel in Pasadena?

A. Approximately three years.

Q. In what capacity?

A. As auditor.

Q. As auditor, do you have in your custody and under your control the records of guest registration of the Constance Hotel?

A. Yes, sir.

930 Q. Is it part of the usual business of the hotel to have made guest registration cards.

A. The guest registers at the time he comes in, yes, sir.

Q. At the time he comes in. I'll show you these cards and ask you if they are part of the records of your hotel.

A. They are, sir.

Q. I'll show you this card being No. 8710, and ask you to tell the jury what that is.

A. That's the—

Q. Talk loud so the jury can hear you, please.

A. That's the registration card of Mr. and Mrs. L. K. Burgess.

Q. On what day?

A. On June 1st, 1935.

Q. And what address was given?

A. Long Beach, New York, it says.

Q. And what street?

A. 2042 Long Beach Road.

Testimony of Roy McMains

Q. Long Beach, New York?

A. That's what it says; yes, sir.

Q. Do you have with you the arrival and departure record of guests?

A. Yes, sir.

Q. At that hotel?

931 A. Yes, sir.

Q. Is that record kept in the usual course of your business?

A. The arrival is recorded sometime during the day.

Q. I don't believe the jury can hear you.

A. I say, the arrival record is made on that particular day, sometime during the course of the day, and the same as to departure.

Q. Do you have that record with you?

A. Yes, sir.

Q. Will you examine that record for No. 8710 and tell the jury how long after June 1st, 1935, Mr. and Mrs. L. K. Burgess remained in the Constance Hotel?

Mr. Hogan: I don't believe that the witness has identified that book as a record kept in the usual course of business.

Mr. Inman: Yes, I think he did, but I will ask him again.

Q. Was that book kept in the usual course of business?

A. Yes, sir.

The Court: Is it the usual course of business of your hotel to keep such a book?

The Witness: I think most hotels do.

The Court: I mean your hotel.

The Witness: It is, our hotel, yes, sir.

932 Q. All right, tell the jury what the record discloses.

A. Mr. and Mrs. Burgess came in June 1st and left June 4th, 1935.

Q. I will ask you to file the card bearing No. 8710 with your testimony as Government Exhibit No. 64.

A. I do.

(The card referred to was handed to the reporter and filed as Government Exhibit No. 64.)

Testimony of Roy McMains

The Court: Are such entries on that book and on those cards made at the time they occur?

The Witness: Sometime during the day; yes, sir.

The Court: Shortly thereafter.

The Witness: Yes, sir.

Q. I'll show you the card bearing No. 10402 and ask you to tell the jury what that is.

A. This is the registration record of Mr. and Mrs. L. K. Burgess.

Q. In what hotel?

A. The Constance Hotel, Pasadena, California.

Q. On what date?

A. December 11th, 1935.

Q. What address did they give at that time?

A. 13224 Maple Avenue, Flushing, New York, it looks like.

933 Q. Does the arrival and departure record about which you have testified disclose how long after December 11th, 1935, Mr. and Mrs. Burgess remained in your hotel?

A. Yes. They arrived on December 11th and left on December 16th, 1935.

Q. I will ask you to file the card bearing No. 10402 with your testimony as Government Exhibit No. 65.

A. I do.

(The card referred to was handed to the reporter and filed as Government Exhibit No. 65.)

Q. Did you register those guests?

A. No, sir.

Q. Did you have any personal contact with them?

A. No, sir.

Mr. Inman: You may ask the witness.

Mr. Hogan: No questions.

Mr. Inman: That will be all.

HARRY KAUFMAN called as a witness in behalf of the Government, being duly sworn, was examined and testified as follows:

Testimony of Harry Kaufman

Direct Examination by Mr. Inman.

Q. State your name to the jury.

A. Harry Kaufman.

Q. Where do you live?

934 A. Los Angeles, California.

Q. What address?

A. 216 N. Arden Boulevard.

Q. Where are you employed?

A. The Automobile Club of Southern California.

Q. In what capacity?

A. Manager of the Membership Department.

Q. Do you have branches of your Automobile Club?

A. Yes, sir.

Q. As manager of the Automobile Club do you have in your custody and under your control the record of memberships and applications from all branches?

A. Yes, all records from all offices are retained in the main office in Los Angeles.

Q. I will show you this card and ask you if that is a record of your Southern California Automobile Club?

A. That's right, sir.

Q. Was this record made in the usual course of business of the Automobile Club of Southern California?

A. Yes, sir.

Q. Was it part of your regular course of business to keep such a record?

A. Yes, this is a permanent record.

Q. What is that record?

A. That is the original application that is signed by the applicant or the member, with the address given.

Q. What is the name of the applicant signed to
935 that card?

A. This is Leslie K. Burgess.

Q. At what address?

A. That carries a mailing address of 346 Sixteenth Street, Santa Monica.

Q. Is the occupation of the applicant shown there?

A. Yes, sir.

Q. What is it?

Testimony of Harry Kaufman

A. Real estate, investments.

Q. What is the date of that application?

A. It is dated February 13th, 1935.

Q. Was a membership card issued as a result of that application?

A. Yes, sir.

Q. To whom?

A. The membership card was issued to Leslie K. Burgess, 346 Sixteenth Street, Santa Monica, California, on the 15th day of February, 1935.

Q. For what period of time?

A. Pardon me.

Q. Was that a year membership?

A. No. This is what we call a six months, half year, membership, which is indicated by the amount.

Q. I'll show you that card and ask you what that is.

A. That's the regular original membership card
936 that's issued upon receipt of this application.

Q. Was the card issued as a result of that application?

A. Yes, sir.

Q. Was any card issued on that application?

A. Yes. There was a duplicate, what we call a supplementary duplicate courtesy card, to Mrs. Jean Burgess. That's issued automatically upon this application—requested. It must be requested to be issued.

Q. Why did you issue two cards, one to Leslie K. Burgess and one to Mrs. Jean Burgess?

A. Well, usually for the extension of courtesy.

Mr. Hogan: Not what is usually—

The Court: What did you do in this case?

The Witness: We issued the card to Mrs. Jean Burgess.

Q. Why did you issue one to her?

A. For service, for club service.

Q. Is it necessary that any relationship exist between the two?

A. Oh, definitely.

Q. What is that relationship?

A. In this case it is indicated by the fact it is printed,

Testimony of Harry Kaufman

that would be the wife.

Q. I will ask you to file this application with
937 your testimony as Government Exhibit No. 66 and the
membership card with your testimony as Govern-
ment Exhibit No. 67.

A. I do.

(The application and the card were handed the
reporter and are filed as Government Exhibits Nos.
66 and 67, respectively.)

Q. Did you personally see the man who applied as
Leslie K. Burgess?

A. No, sir.

Mr. Inman: That's all.

Mr. Hogan: No questions.

LEO SHACTMAYER called as a witness in behalf
of the Government, being duly sworn, was examined and
testified as follows:

Direct Examination by Mr. Inman.

Q. State your name to the jury.

A. Leo Shactmayer.

Q. Keep your voice up, Mr. Shactmayer. Tell the jury
where you live.

A. At Santa Monica, 14956 Camarosa Drive, Pacific
Palisades.

Q. Los Angeles County, California?

A. Yes, sir.

Q. In what business are you engaged?

938 A. Automobile business.

Q. What is the name of your company?

A. At this time?

Q. Yes.

A. Simonson & Shactmayer, Incorporated.

Mr. Hogan: Will you spell the name of the street which
you give as your address?

The Witness: 14956 Camarosa Drive.

Testimony of Leo Shactmayer

Mr. Hogan: Spell that.

The Witness: C-a-m-a-r-o-s-a.

Mr. Hogan: Your Honor, the street is shown P-a-m-a-r-o-s-a. I object to his testimony.

Mr. Inman: I think that is so slight, Your Honor.

The Court: No. I think the statute is quite strict on that.

Mr. Inman: There is a difference of one letter.

The Court: The first letter?

Mr. Inman: Yes, sir.

The Court: The witness will be excused.

Mr. Inman: If Your Honor please, the next witness, it will be necessary to bring quite a few exhibits into the court room.

The Court: All right. Members of the jury, we
939 will take a short recess at this time. Do not discuss the matter among yourselves or with anyone, or permit anyone to talk about it in your presence.

Mr. Marshal, give us a ten minute recess.

A short recess was taken, after which the hearing was resumed, as follows:

EARL J. CONNELLEY called as a witness in behalf of the Government, being duly sworn, was examined and testified as follows:

Direct Examination by Mr. Brown.

Q. State your name to the jury.

A. Earl J. Connelley.

Q. What position do you occupy with the Government, Mr. Connelley?

A. Assistant Director, Federal Bureau of Investigation, United States Department of Justice.

Q. Where do you live?

A. 506 E. Fourth Street, Cincinnati, Ohio.

Q. During the year 1934, were you an employee of the Department of Justice, Federal Bureau of Investigation?

A. Yes.

Testimony of Earl J. Connelley

Q. During the month of October, 1934, did you have occasion to be in Louisville, Kentucky and vicinity?

A. Yes.

940 Q. What was your capacity here at that time, Mr. Connelley?

A. I was in charge of the investigative effort in connection with the kidnapping matter that was under inquiry at that time.

Q. On or about October 16th, 1934, immediately after the return of Mrs. Stoll to her home, did you receive any money at that time?

A. I examined certain money at that time.

Q. Where did you procure that money from?

A. Mr. Berry V. Stoll.

Q. Was that money at that time identified by initialing it in any way?

A. It was. It was initialed by myself, Mrs. Stoll and Mr. Speed.

Q. Did you examine the serial numbers on that money?

A. I did.

Q. Did you compare the numbers that you found with any other numbers?

A. I compared that with a list of bills which were in our possession at that time.

Q. I'll hand you Government Exhibit 36 and ask you to examine that and tell the jury whether the \$470.00 which you have heretofore testified about, whether the serial numbers of those bills were compared with that list.

A. The serial numbers were compared with a
941 photostatic copy of this list which I had previously verified with the original sheet which is Page No. 1, initialed by A.E.G., listing one hundred numbers of \$5.00 bills.

Q. Now, I will ask you if the money that was turned over to you by Mr. Berry Stoll and initialed by Mrs. Alice Stoll, Mr. Berry Stoll and yourself, the serial numbers of those bills appear as a part of the ransom money.

A. Ninety-four bills were examined and ninety-four bills appear on the first page indicated as Page No. 1, initials A.E.G.

Testimony of Earl J. Connelley

Q. Now, Mr. Connelley, when did it become known to you the whereabouts of the apartment in Indianapolis that Mrs. Stoll was held captive?

A. On the evening of October 16th, 1934.

Q. Was that before or after the release of Mrs. Stoll?

A. That was after her release.

Q. With reference to the presence at the home of Mr. Berry V. Stoll of any persons at the time of Mrs. Stoll's return, I will ask you what persons were present at the time Mrs. Stoll returned to her home on Lime Kiln Road.

A. Mr. Berry V. Stoll, myself, and Mrs. Stoll returned there in the presence of two other agents of the Federal Bureau of Investigation.

Q. Was the property of Mr. Stoll on Lime Kiln
942 Road ordered cleared by you or not?

A. It was.

Mr. Brown: You may ask the witness.

Cross-examination by Mr. Hogan.

Q. What are the names of those other two agents stationed at the Stoll residence?

A. M. H. Purvis and H. E. Hollis came there with Mrs. Stoll in a car.

Q. Now, how many agents assigned to the Louisville office were engaged in investigating this matter prior to her return?

A. I have no independent recollection of that. There were a number of agents, probably fifteen or twenty.

Q. Were you in charge of those agents, Mr. Connelley?

A. Yes, sir.

Q. Didn't the information clear through you as it came in?

A. That's right.

Q. You knew that before Mrs. Stoll returned that she had been in Indianapolis, did you not?

A. I did not.

Q. Do you mean to say that you did not know that she had been there until Mr. Purvis and Mr. Hollis drove
943 in with her?

A. Sometime on that day of October 16th, after

Testimony of Earl J. Connelley

she had been released and the agents communicated with me from some point near Scottsburg, Indiana, is the first actual knowledge I knew Mrs. Stoll was anywhere, or anybody else in the Bureau.

Q. Didn't they know as early as Sunday, October 15th, where she was?

A. Nobody knew at that time.

Q. You are speaking of the Department of Justice, are you?

A. Federal Bureau of Investigation, Department of Justice.

Q. I will ask you if it isn't true that the Department did know it, and that you knew it, and that the newspapers here had the type set up, ready to print, that the man had been caught?

A. I had no such knowledge, and from my general information from everybody else in the Bureau from whom the information was clearing, nobody knew that at that time.

Q. You had contact with your Nashville office, did you not?

A. That is right.

Q. You knew that calls had been placed from Indianapolis to Nashville?

944 A. We knew that calls had been placed from some individual in Indianapolis, a man, from the best information that we could get from the conversation of the party receiving the conversation.

Q. Isn't it true that the F.B.I. agents at Nashville listened to those conversations that came from Indianapolis to the home of Mr. Thomas H. Robinson, Sr. and to the home of Mrs. Francis Robinson?

A. Not of my own knowledge. I don't know whether they listened to the calls or not. There were some calls possibly that they did. That would be the same information, some man called on the telephone.

Q. So with that information coming from Indianapolis and with the agents listening in to the conversation, they knew that Thomas Robinson was speaking from Indianapolis, did they not?

Testimony of Earl J. Connelley

A. They would have—they could make the deduction that Thomas Robinson was there, if the man calling was Robinson.

Q. Didn't you know the location of this apartment prior to the time Mrs. Stoll returned?

A. We did not know the location of the apartment until after Mrs. Stoll and Mrs. Robinson had been contacted on the road at Scottsburg, Indiana, on the evening of October 16th, 1934.

945 Q. Your agent Reynolds had reached Indianapolis at 3:00 or 4:00 o'clock a.m. the morning of the 16th, and you knew that, did you not?

A. I did not.

Q. Were you in contact with the Indianapolis office?

A. I was in contact with the office, yes.

Q. And you say that you did not know that agent Reynolds or any other agent had gone from Nashville to Indianapolis on that occasion?

A. Some agents had left Louisville through Evansville on the train to Terra Haute, Indiana.

Q. Those were under your supervision, those Louisville agents, when they did that?

A. When they left here they were under my supervision. When they arrived there they were under the supervision of H. H. Reinecke, the Special Agent in charge of the Indianapolis office.

Q. But you sent them out of Louisville.

A. That's right.

Q. On a mission.

A. That's right.

Q. What was that mission?

A. Insofar as possible to see that nothing happened to Mrs. Robinson enroute with the money, the \$50,000.00.

Q. Did you know anything about her trip?

946 A. Nothing other than communication with the Nashville office that she presumably had left for some point in Tennessee and would reach possibly Evansville, Indiana, that night.

Q. Did your agents see her in Terre Haute?

A. They did.

Testimony of Earl J. Connelley

Q. Did they go with her to Indianapolis?

A. I would not know. I don't think they did because their mission was to take her as far as Terre Haute where she was turned over to the agents of the Indianapolis office.

Q. As a matter of fact, your agents lost her trail, did they not?

A. Well, that's a matter of conjecture.

Q. They didn't stay with her, did they?

A. Well, that was part of their instructions.

Q. Not to stay with her?

A. Not necessarily to do anything with her which would interfere with her contact with the man who was holding Mrs. Alice Stoll.

Q. The next time that any of your agents picked up the trail of Mrs. Frances Robinson was at Scottsburg, Indiana, wasn't it?

A. No. They learned that she had left apparently with a couple from Indianapolis en route South in an automobile.

947 Q. And it was at Scottsburg that they overtook an automobile containing Frances Robinson and Mrs. Stoll.

A. That's right.

Q. Did you ever go over to this Apartment No. 2 at 2735 North Meridian Street?

A. I have never seen the apartment any time in my life that I recall, and I was not there during the time of October, 1934. I was not in Indianapolis at that time.

Q. Where are you stationed now?

A. I work out of Washington.

Q. Are you assistant to Mr. J. Edgar Hoover?

A. That's right.

Mr. Hogan: I believe that's all.

Redirect Examination by Mr. Brown.

Q. Mr. Connelley, where is Mr. Hollis?

A. He is dead.

Q. Where is Mr. Purvis?

A. He is in North Africa.

Testimony of Earl J. Connelley

Q. Throughout this entire period, Mr. Connelley, with relation to the protection or non-protection of Mrs. Alice Stoll, what was your purpose in giving the instructions that you have testified about concerning the agents accompanying Mrs. Francis Robinson?

A. We were interested at that time only in maintaining the safe return of Mrs. Stoll.

Q. And every step that you took, was it or was it not designed for that purpose?

A. That is right.

Mr. Brown: That is all.

Recross-examination by Mr. Hogan.

Q. How soon after this did Mr. Purvis leave the service of the F.B.I.?

A. I don't recall exactly. I think a year or so thereafter, possibly two years.

Q. He was one of the ace investigators at that time, was he not?

A. If you want to put that appellation on it that we all are that, we are not. There is not much difference between us.

Q. He was played up in the newspapers as an ace, was he not?

A. Newspapers and the bureau are two different parties. The Bureau is not responsible for what the newspapers publish.

Q. Didn't Mr. Purvis get mad and quit following this case?

A. He did not.

Mr. Brown: I don't know that any internal matters of the Bureau are concerned in this case.

The Court: Has that anything to do with this case, Mr. Hogan?

Mr. Hogan: It might concern the inner workings of this case.

The Court: Mr. Purvis is not a witness. You are not attacking his credibility in any way, are you?

Mr. Hogan: No, sir, I am not, not attempting to. That's all.

Testimony of John P. Knowles

JOHN P. KNOWLES, called as a witness in behalf of the Government, being duly sworn, was examined and testified as follows:

Direct Examination by Mr. Brown.

Q. State your name to the jury.

A. John P. Knowles.

Q. By what concern are you employed, Mr. Knowles?

A. I am employed by the Federal Bureau of Investigation, United States Department of Justice.

Q. Where do you live?

A. 715 Varnum Street, Washington, D. C.

Mr. Brown: This is the point, Your Honor, where this matter will come up. I want to offer in evidence and have marked as Government exhibits, two finger-print cards that will be introduced by Richard E. Smith, former special agent of the Federal Bureau of Investigation. 950 Mr. Smith's train is delayed and he will not be here until sometime late tonight, and I make this offer and the subsequent testimony of Mr. Knowles upon which part of it will be based, that this exhibit is the known specimen of finger-prints, and, of course, with the understanding that unless I so do this Mr. Knowles' testimony will be stricken from the record.

The Court: We discussed that with Mr. Hogan in chambers, and it is understood, I believe by counsel for both sides, that this witness can testify with respect to these exhibits with the understanding that they will be properly introduced by Mr. Smith tomorrow.

Mr. Hogan: Before we do that, will the reporter read me the address given by the witness?

(The reporter read the following:)

"715 Varnum Street, Washington, D. C."

Mr. Hogan: I will ask that the witness not be allowed to testify.

The Court: What is the address?

Mr. Hogan: The address is 715 Varnum Street, Northwest, Washington, D. C.

The Court: That's where you live, Northwest?

The Witness: That's right.

Testimony of John P. Knowles

Mr. Hogan: He didn't so state on direct examination.

951 The Court: He is stating now.

Mr. Brown: Mark that as Government Exhibit No. 68, and mark this for identification Government Exhibit No. 69.

The Court: Are there two different sheets?

Mr. Brown: Yes—three different sheets altogether.

The Court: Three sheets numbered 68 and 69? You have got two numbered 68.

Mr. Brown: Yes, two sheets numbered 68.

The Court: We better mark one 68-a and the other 68-b, hadn't we?

Mr. Brown: All right.

(The sheets referred to were marked for identification, Governments Exhibits Nos. 68-a, 68-b and 69, respectively.)

Q. Where are you employed?

A. I am employed in the Single Finger-print Section of the Federal Bureau of Investigation.

Q. Of what school or colleges are you a graduate?

A. Well, I studied—I had normal training the State of Iowa, taught school two years, passed the state examination, of course; I attended George Washington University, studying liberal arts, majoring in mathematics, and I received the Bachelor of Commercial Science degree from Benjamin Franklin University in Washington, D. C.

952 Q. After your graduation from the various schools that you have mentioned, where were you employed?

A. I have been employed by the Federal Bureau of Investigation for a little over seventeen years. I also was employed by the War Department prior to my coming to the Federal Bureau of Investigation for a period of nine months.

Q. During your employment by the Department of Justice, have you specialized in any branch of work, Mr. Knowles?

A. Finger-prints, strictly.

Testimony of John P. Knowles

Q. What are your duties in connection with finger-prints?

A. Developing, classifying and searching latent finger-prints, conducting research work in the department of latent finger-prints, instructing police officers and special agents in the methods of developing latent finger-prints and how to lift them and photograph them, and we get out publications, prepare evidence for court testimony and instruct the special agents and police officers in taking ink finger-prints and palm impressions.

Q. Mr. Knowles, in connection with your duties in the finger-print classification section of the Federal Bureau of Investigation, did you have occasion to examine a number of documents submitted to you from the Louisville office of the Federal Bureau of Investigation?

953 A. I did.

Q. I'll hand you Government Exhibit 68-a and b, which I will refer to as the known specimen, and hand you Government Exhibit 69, and ask you if you have made a comparison of the prints contained on Government Exhibit 68-a and b and Government Exhibit 69.

A. I have.

The Court: Let the record show that the back side of Government Exhibit 69 has been covered with a piece of paper clipped to it.

Mr. Hogan: If Your Honor please, I want to state right here that I am going to object to the jury being permitted to examine 69, or whichever one of those exhibits has the paper on the back. I don't want to take any chances.

The Court: The court is not going to let any one of those exhibits go to the jury that has inscriptions on the back. The Kessler-case, I think, held they couldn't do that.

Mr. Hogan: Yes. They got into trouble in that case.

Mr. Brown: That's what I am going to avoid.

The Court: However, it can be pasted on there before it goes to the jury so that it cannot be removed.

Q. Did you answer that?

A. These three cards contain the finger impressions

Testimony of John P. Knowles

954 *of the same person, that is, all three are identical.

Q. That is the finger-prints of Thomas H. Robinson, Jr. as disclosed by Government Exhibit 68-a and b?

A. That's right.

Q. I'll hand you Government Exhibit 33, being the original ransom note, and ask you if you examined that ransom note to determine the presence or absence of finger-prints.

A. Yes. This was examined under my supervision by a chemist.

Q. Have you prepared any charts of that, Mr. Knowles?

A. As a result of our examination there were sixteen latent finger-prints developed on this specimen, that is, the envelope and the two pages of the letter.

Q. Have you prepared any charts as a result of that examination?

A. Yes. I identified thirteen impressions with finger-prints of Thomas H. Robinson. I have prepared charts of three of the latent impressions.

Q. Suppose you refer to your charts, if you have them here.

A. Shall I show them to the jury?

Q. Yes.

A. Your Honor, I will show these charts I have prepared to the jury. These are copies, photographic
955 copies of the original.

(At this point the witness banded photographs to the court and counsel for defendant.)

Mr. Hogan: If Your Honor please, let's not have them shown to the jury as yet.

The Court: How is he going to explain them if he doesn't show them to the jury?

Mr. Hogan: I submit they haven't been properly identified.

The Court: He asked him if he made some charts, didn't he?

Mr. Brown: Of the latent finger-prints that he has identified as being on the ransom note.

Mr. Hogan: I am just making my objection on that basis.

Testimony of John P. Knowles

The Court: If you will explain what you mean by it—don't understand.

Mr. Hogan: I don't think the prints and the other evidence have been connected up sufficiently to identify the defendant with what has been stated by this witness and hers.

The Court: Mr. Knowles, these charts which you have, on what did you prepare them?

The Witness: They are photographs of the latent finger-prints that were developed on the note. I prepared them by using the original negative and enlarging the areas.

The Court: Were the finger prints lifted from the ransom note and envelope in the usual, regular method used by finger-print men?

The Witness: That's right.

The Court: These charts are enlarged reproductions of those?

The Witness: That's right, sir. Perhaps I could explain how they were developed.

The Court: All right.

The Witness: The original ransom note was taken to the laboratory and the chemist dipped it into a solution of silver nitrate. The salt that was present in the ridge tracing reacts with silver nitrate and makes silver chloride, and when exposed to a bright light the silver chloride turns black. They are then photographed. We make a negative and enlarge the area on the negative that we want to chart.

Q. Was that method that you just outlined followed exactly in the case of the latent finger-prints found by you on the ransom note which is Government Exhibit 33?

A. That's right.

Q. All right, you may show them to the jury, whatever you have there.

Mr. Hogan: I take it my objection is overruled then.

157 The Court: If you will give me the basis of your objection, Mr. Hogan, I will rule on it, but I think unless you designate the basis I am not required to rule on it.

Mr. Hogan: I gave you my basis as I understood it.

Testimony of John P. Knowles

The Court: What is it?

Mr. Hogan: I say, I gave you my basis.

The Court: Repeat it again. I am not familiar with it.

Mr. Hogan: Suppose I have the reporter read it.

The Court: No. Give it to me now.

Mr. Hogan: My basis of objection is based on, or was based at that time, on not connecting these finger-prints up with the proper person, the defendant.

The Court: All right, objection overruled.

Mr. Hogan: Exception.

(The document referred to was filed, having been identified as Government Exhibit No. 69.)

A. This is the outside of the envelope containing the original ransom note. This was treated with silver nitrate solution. Three latent finger-prints were developed and these specimen photographs, of course, were made, and this is the original negative. I have marked the impressions on the photograph. This is the inside of the envelope. One latent finger-print was developed on the inside. This would be a negative of the photograph. This is the
958 first page of the original ransom demand note. There are no latent finger-prints of any value on this page. There are latent impressions, but they are not of value.

Q. Explain what you mean by that.

A. There are not enough characteristic points in them to identify them. Two photographs of that—it is a long specimen and we had to take two photographs to get it all in the picture. This is the reverse side of the first page of the ransom note. There are seven latent finger-prints developed on this specimen. That's the reverse side of the first page. Latent finger-prints are marked and the original negative is attached. On this reverse side of the first page I prepared two charts. This is the second page of the original ransom note. There are four latent finger-prints. Four were identified as finger-prints of Thomas H. Robinson. There are two charts. The areas from which the charts were prepared are marked. This is the reverse side of the second page of the ransom demand note. There was one latent finger-print of value developed and it was

Testimony of John P. Knowles

identified.

Q. Identified as what?

A. As the left thumb impression of Thomas H. Robinson.

Q. Suppose you refer to your note and tell us with reference to the finger-prints that you have identified as that of Thomas H. Robinson and tell us which
959 of his fingers made the print and how many appear on the envelope, the front side of the first page, the reverse side of the first page, the front side of the second page, the reverse side of the second page, and the inside of the envelope.

A. There was a total of sixteen latent finger-prints developed, three on the outside of the envelope, one on the inside of the envelope, seven on the reverse side of the first page, four on the second page, one on the reverse side of the second page. Thirteen of these latent finger-prints were identified, two on the outside of the envelope with his right thumb and right index finger impressions; six on the reverse side of the first page, two with his right thumb impression, one with his right index finger impression, one with his right middle finger impression, one with his left index finger impression, and one with his left middle finger impression. Two on the second page were identified with his right thumb impression, and two with his left thumb impression. One on the reverse side of the second page, as I stated before, was identified with his left thumb impression.

Q. Now, with reference to points of similarity, so that we may understand something about that. Suppose you explain to the jury what you mean by points of similarity in the charts and refer to known specimen
960 Exhibit 68-a and b.

A. I will pass these out.

Q. Pass them out and let each one of the jurors have one, and don't talk too fast so we can all see what you are doing.

A. This I am passing out is the known finger impression. These that I have with the red lines are the original charts. Those are photographs. I will pass out the

Testimony of John P. Knowles

original.

Q. Now, Mr. Knowles, when you say known impression, what do you mean by that?

A. That's the impression enlarged. That's the right thumb impression on the finger-print card enlarged seven and a half times. Now, in identifying a finger-print impression there are certain characteristics.

Mr. Brown: Just one moment, Mr. Knowles. Step over here so I can caution you. I want to step out of the presence of the jury.

(Mr. Brown and the witness proceeded to the judge's bench where Mr. Brown spoke to the witness out of the hearing of the stenographer and the jury.)

A. (Continuing) The chart marked No. 1 is an enlargement of the right thumb impression of one of the finger-print cards.

Q. Which one is the known specimen of Robinson?

961 A. It is the right thumb impression, right here.

Chart marked No. 1-a is the latent impression appearing on the reverse side of the first page of the original ransom letter. Now in identifying a latent impression there are certain characteristics which must be found in each set of impressions before you can reach the conclusion that they are identical. They are called the bifurcation, which is the splitting of one ridge into two, the ending ridge, the island and the enclosure. Now these points that I have marked on these charts, if you will look at No. 1, it is what is known as an ending ridge. The ridge ends at that point in both sets of impressions, that is, in the latent finger-print, and in the known finger-print there is an ending ridge right at that point.

Juror: Which one are you referring to as latent—1-a?

The Witness: 1-a is the latent finger-print. In other words, it does not appear, the detail is not as well defined as it is in the ink finger-print. No. 2 is an ending ridge. The ridge ends right at the point marked No. 2 in both sets of impressions. No. 3 is a ridge bifurcating downward; in other words, right at that point 3 the ridge splits into two in both sets of impressions and it comes back together again at the point marked eleven. It makes an

Testimony of John P. Knowles

692 enclosure. No. 4 is an ending ridge, you will notice on both impressions, there is an abrupt ending ridge. No. 5, if you will count, between 4 and 5 you will see that there are two ridges intervening. Then you have another abrupt ending ridge almost straight across from the No. 4, slightly below. No. 6 is a ridge bifurcating downward. You will notice above the point marked six the ridge is single, after you pass that point it is double. No. 7 is a ridge bifurcating downward. You will notice on both impressions. No. 8 is an ending ridge. There is only one ridge in between No. 8 and No. 7. No. 9 is a ridge bifurcating downward. No. 10 is a ridge bifurcating downward. If you will notice between 9 and 10 there are two ridges. No. 11, I called that to your attention before, it makes the lower end of that enclosure. No. 12 is a ridge bifurcating downward. By means of these characteristics I reached the conclusion that these two impressions were identical.

Q. Now, when you say "were identical"—what do you mean by that?

A. They could have been made by no other person.

Q. Than whom?

A. Than Thomas H. Robinson, or by no other finger than his right thumb.

Q. Now, I would like for you to introduce the photographs and the negatives of those, of that latent impression that you have testified about, as a part of
963 your testimony, marked Government Exhibit 70—and how many have we got?

A. These are merely photographs. I think you can introduce merely the original with the red lines on them.

(The two charts are handed to the Reporter, marked Government Exhibits Nos. 70-a and -b, and filed with the record.)

Q. I would like to introduce as Government Exhibit 71-a the negatives of the outside of the envelope; as Exhibit 71-b the negatives of the inside of the envelope; as Exhibit 71-c the first page of the original ransom note; as Exhibit 71-d the second page of the original ransom note; as Exhibit 71-e the reverse of the first page of the orig-

Testimony of John P. Knowles

inal ransom note; and as Exhibit 71-f the reverse of the second page of the original ransom note.

A. All right.

(The negatives referred to were marked Government Exhibits Nos. 71a, -b, -c, -d, -e, and -f, respectively, and filed.)

Q. I'll hand you Government Exhibit 32, being the letter addressed to Mr. Berry Stoll, care of Mr. W. S. Speed, signed "Alice," and ask you, Mr. Knowles, if you made an examination of that letter to discover the presence of latent finger-prints of Thomas H. Robinson Jr.?

A. I have.

Q. Would you detail to the jury the information whether you did or did not find on that letter or envelope fingerprints of the defendant, Thomas H. Robinson, Jr.?

A. I did. On the letter from Mrs. Stoll to Mr. 964 Berry Stoll there are eight latent finger-prints and one palm print developed, one on the outside of the envelope, three on the reverse side of the first page, the palm print on the second page, and four on the reverse side of the second page. Seven latent finger-prints were identified, one on the envelope with the right thumb impression of Thomas H. Robinson, three on the reverse of the first page with the left index, left middle and left ring finger impressions of Thomas H. Robinson, three on the reverse of the second page, two of which were found to be identical with the right thumb impression.

Q. In the same method that you have outlined, were charts and negatives prepared of the various exhibits?

A. That's right.

Q. I'll hand you Government Exhibit 30, consisting of an envelope addressed to Miss Elizabeth McHenry, and a letter and two pages signed "Love" from "A Seat" and ask you if you examined that exhibit to determine the presence or absence of finger-prints of this defendant, Thomas H. Robinson, Jr.

A. I did.

Q. Will you tell the jury what you found from your examination?

Testimony of John P. Knowles

A. There were twelve latent fingerprints, a total of twelve latent fingerprints developed, three on the
 965 outside of the envelope, one on the first page of the letter, two on the reverse side of the first page of the letter, one on the second page, and five on the reverse side of the second page. Five of the latent finger-prints were identified, one on the first page with the left thumb impression of Thomas H. Robinson; four on the reverse side of the second page, three with his left thumb impression and one with his right thumb impression.

Q. I'll hand you Government Exhibit 48, consisting of an envelope addressed to "The Custodian, 2725 North Meridian, Indianapolis, Indiana," and a single sheet addressed to "The Custodian," signed in typewriter "Mr. Kennedy, Apartment 2, 2735 North Meridian," and ask you if you examined that exhibit.

A. I did.

Q. Did you determine the presence or absence of fingerprints of this defendant, Thomas H. Robinson, Jr.?

A. Upon examination, eight latent finger-prints and one palm print were developed, one finger-print and the palm print on the outside of the envelope, one on the inside of the envelope, three on the front of the letter, and three on the back of the letter. Two latent finger-prints were identified, one on the outside of the envelope with the left middle finger impression of Thomas H. Robinson, one on the back of the letter with the left middle finger
 966 impression of Thomas H. Robinson.

Q. I'll hand you Government Exhibit 47, consisting of an envelope on which appears "Important. Read instructions for operating in this envelope. L. C. Smith and Corona typewriters, Incorporated," and one pamphlet "How to use Corona portable typewriter," and ask you if you examined that exhibit to determine the presence or absence of finger-prints of this defendant, Thomas H. Robinson, Jr.

Mr. Hogan: Mr. Brown, what is that exhibit number, please?

Mr. Brown: 47, I thought I said.

A. This specimen was not treated for latent finger-

Testimony of John P. Knowles

prints for the simple reason that the finger-prints were on there when it came in. I don't know just how they were made on there. I could guess.

Q. Don't guess. Tell us what you found.

A. There are three latent finger-prints of the specimen, that is, they could be seen without developing them, and two of them were identified, one with the left thumb impression of Thomas H. Robinson and one with the left index finger impression of Thomas H. Robinson.

Q. Did you have occasion to examine and compare the finger-prints, if any, found on the telephone box from the home of Berry V. Stoll? I'll hand you Government Exhibit 43.

A. Yes, I did.

967 Q. Tell the jury whether from your examination you determined the presence or absence of finger-prints of this defendant Thomas H. Robinson on the telephone box.

A. There are three latent finger-prints in the photographs. Two of them were not of sufficient detail to permit identification. One was found to be identical with the right middle finger impression of Thomas H. Robinson, Jr.

* Q. Now, Mr. Knowles, you have mentioned points of similarity, with reference to the use of the word points what do you in your technical language mean by that?

A. They are the points that would be charted on a set of impressions; in other words, we chart twelve usually, but that doesn't mean that there are no other points in the impression, there may be hundred of them, but we pick out the points of similarity that we think really stand out and chart them.

Q. Now, to determine the identity of certain latent finger-prints when you compare them with known specimen, how many points do you have to find before you make the identification?

A. It has been pretty regularly established that twelve points are sufficient.

Q. Why? Just explain to the jury why that is true.

Testimony of John P. Knowles

968 A. Well, it is beyond any mathematical possibility of making a poor or a mistaken identification by using twelve points.

Q. How long have you been in the Bureau of Investigation?

A. Seventeen years.

Q. During that time would you hazard a guess as to how many finger-print identifications you have made?

A. Thousands.

Q. In your entire experience, have you ever found that finger-prints made by two different persons are identical?

A. No. I have not.

Q. How many finger-prints do you have in the files of the Federal Bureau of Investigation?

A. The last count I saw posted was seventy-eight million.

Q. In that entire file, are there any two identical?

A. No.

Mr. Hogan: That's if he knows.

The Court: Of course. Have you looked at them all, Mr. Knowles?

A. No, I have not. From my own experience I have made four million comparisons in one case that we
969 are investigating.

The Court: All that you have investigated, you mean, you found not identical.

The Witness: That's right.

Mr. Brown: You may ask the witness.

Mr. Hogan: No questions, Mr. Knowles.

The Court: As I understand it, these comparisons were made between the finger-prints which were developed and the known finger-prints which are to be identified by Mr. Smith tomorrow.

The Witness: That's right.

The Court: Members of the jury, the Government has a few additional witnesses that they want to offer in evidence, but due to the closeness to the hour or adjournment I have decided to let them come in tomorrow morning.

We have decided to hold a short session tomorrow,

Proceedings

probably a half day, or part of the morning, at least, and probably by noontime we will be able to adjourn for the day and week-end, resuming the case on Monday morning.

Accordingly, we will adjourn at this time. Do not discuss this case among yourselves or with anyone, or permit anyone to discuss it in your presence. We will convene tomorrow morning at 9:30.

970 Convened pursuant to adjournment, Saturday morning at 9:30 on December 4, 1943, and continued with the trial as follows:

Mr. Brown: I want to recall Mr. Knowles to put those exhibits in that I spoke to you about yesterday.

The Court: All right.

Mr. Brown: In connection with the next exhibit, the last one being 71f, I want to introduce two charts as 71g and 71h.

Now, with reference to the letter from Mrs. Alice Stoll to Mr. Berry V. Stoll, in care of Mr. W. S. Speed, I want to introduce a joined chart as Government Exhibit No. 72-a.

With reference to the first page of the same letter, I want to introduce a chart, marked 72-b, and the negative 72-c.

With reference to the envelope of the same letter I want to introduce an enlargement of the envelope as Government Exhibit 72-d, and the negative as 72-e.

The inside of the envelope of the same letter, I want to introduce an enlargement of that as Government Exhibit No. 72-f and the negative as 72-g.

The reverse of the first page of the same letter, I want to introduce as enlargement as Government Exhibit 971 No. 72-h and the negative as 72-i.

And the second page of the same letter, I want to introduce an enlargement as Government Exhibit No. 72-j and the negative as 72-k.

The reverse of the second page of the letter, an enlargement as Government Exhibit No. 72-l, and the negative as 72-m.

Now with reference to the exhibits pertaining to the letter from Mrs. Alice Stoll to Miss Elizabeth McHenry, I want to introduce the charts as Government Exhibit No.

Proceedings

73-a and 73-b.

The envelope in which that same letter was contained, I want to introduce two enlargements as Government Exhibit No. 73-c and 73-d; and another enlargement as 73-e and the negative as 73-f.

The first page of the same letter from Mrs. Stoll to Miss McHenry, the enlargement as Government Exhibit No. 73-g and the negative as 73-h.

The reverse of the first page of the letter from Mrs. Alice Stoll to Miss Elizabeth McHenry, the enlargement as Government Exhibit No. 73-i and the negative as 73-j.

The second page of the letter from Mrs. Stoll to Miss Elizabeth McHenry, the enlargement as Government Exhibit No. 73-k and the negative as 73-l.

The reverse of the second page of the letter from 972 Mrs. Stoll to Miss Elizabeth McHenry, the enlargement as Government Exhibit No. 73-m and the negative as 73-n.

With reference to the testimony concerning the letter addressed to the Custodian, I would like to introduce the envelope with reference to the envelope addressed to the Custodian, an enlargement as Government Exhibit No. 74-a and the negative as 74-b.

The inside of the envelope addressed to the Custodian, an enlargement as Government Exhibit No. 74-c and a negative as 74-d.

The front page of the letter addressed to the Custodian, an enlargement as Government Exhibit No. 74-e and the negative as 74-f.

The reverse of the letter addressed to the Custodian, an enlargement as Government Exhibit No. 74-g and the negative as 74-h.

With reference to the testimony pertaining to the envelope on which there was found the words, "Important. Read instructions for operating in this envelope, L. C. Smith and Corona typewriter Company, Inc.," I would like to introduce two enlargements as Government Exhibit No. 75-a and 75-b, and the negative as 75-c.

And the reverse of the same envelope, two enlargements as Government Exhibit No. 75-d and 75-e; and the nega-

Testimony of Richard E. Smith

tive as 75-f.

973 And the charts of the same as Government Exhibit No. 75-g and 75-h.

The Court: Now, Mr. Knowles, all of those negatives and enlargements and charts were the ones prepared by you and on which you based your testimony yesterday. Is that right?

Mr. Knowles: Yes, sir.

The Court: All right.

RICHARD E. SMITH was called as a witness for the government and, after having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Brown.

Q. State your name to the jury?

A. Richard E. Smith.

Q. Where do you live, Mr. Smith?

A. Dallas, Texas.

Q. What position do you now hold?

A. I am with the North American Aviation Company at Dallas.

Q. During the year 1934 what position did you hold?

A. I was a Special Agent with the Federal Bureau of Investigation.

974 Q. Assigned to what office?

A. Louisville.

Q. I will hand you—

Mr. Hogan (Interrupting): Mr. Smith, what is your address?

Witness: 5514 Emerson, Dallas.

Mr. Hogan: Texas?

Witness: Yes, sir.

Q. (Continuing) I will hand you Government Exhibits 68-a and 68-b and ask you what they are?

A. These are fingerprint impressions of Thomas H. Robinson, Jr.

Mr. Hogan: Now that is objected to.

Testimony of Richard E. Smith

Q. Well, who took them?

A. I did.

The Court: What is the basis of your objection?

Mr. Hogan: Well that is a conclusion of the witness, if Your Honor please, unless he knows something else.

The Court: All right. Just tell what you did, Mr. Smith.

Q. What did you do?

A. I took these fingerprint impressions in the Louisville Office subsequent to the arrest of Thomas H. Robinson, Jr.

975 Q. What was the date upon which you took those fingerprints?

A. The 13th of May.

The Court: What year?

Witness: 1936.

Q. As a Special Agent of the Federal Bureau of Investigation, prior to that time had you had occasion to make many or few finger prints?

A. On several occasions.

Q. What method did you follow in obtaining the fingerprints that you have testified about?

A. I used regular printers' ink that is used for taking fingerprints; and I placed his finger tips on the ink and then made the impression on the card.

Q. And state whether or not they are the fingerprints which you took of the defendant, Thomas H. Robinson, Jr.?

A. Yes, sir.

Mr. Brown: I would like to introduce this in evidence as Government Exhibits Nos. 68-a and 68-b.

The Court: Do either one of those have anything on the reverse side?

Mr. Brown: No, sir, I have covered everything up, Your Honor.

(The above fingerprint cards were handed to the Reporter and filed with the record.)

976 The Court: Just what is the difference between the two charts?

Testimony of Richard E. Smith

Mr. Smith: There is no difference.

The Court: Is one of one hand and the other of the other hand, or what?

Mr. Smith: They are both the same.

The Court: Are they duplicates?

Mr. Smith: Yes; taken at the same time subsequently. I mean, one after the other.

The Court: I mean is one one hand and the other the other hand, or are they both the same?

Mr. Smith: No, sir. They both contain the complete impression.

The Court: All right. Then you just took two impressions?

Mr. Smith: Yes, sir.

Cross-examination by Mr. Hogan.

Q. Did you or not take any impression of the left hand, or fingers of the left hand?

A. Yes, sir, they are on the chart.

The Court: No, I think he just took two impressions of each finger, one on each card. Is that right?

Witness: Yes, they are each a complete set.

977 The Court: Does the card itself designate what finger in each instance the impression is from?

A. Yes, sir.

Mr. Hogan: That is all.

EDWIN R. DONALDSON called as a witness for the government, was duly sworn and was examined and testified as follows:

Direct Examination by Mr. Brown.

Q. State your name to the jury?

A. Edwin R. Donaldson.

Q. Where do you live?

A. 9624 Flower Avenue, Silver Springs, Maryland.

Q. What position do you occupy with the government?

A. Special Agent of the Federal Bureau of Investiga-

Testimony of Edwin R. Donaldson

tion.

Q. How long have you been a Special Agent of the Federal Bureau of Investigation?

A. Since September 1934.

Q. Attached to what division of the Bureau?

A. The FBI laboratory.

Q. Of what schools or colleges are you a graduate?

978 A. The Bradford Durfee Textile School, Fall River, Massachusetts.

Q. Have you had any experience as an analyst or research chemist?

A. Yes, sir.

Q. Where?

A. At the Mt. Hoke Finishing Company, at North Dyton, Massachusetts.

Q. Have you ever acted as an instructor in chemistry?

A. Yes, sir.

Q. Where was that?

A. At the National Association of Dyers and Cleaners Institute, at Silver Springs, Maryland, and in our own training schools.

Q. Have you had any other experience as a research chemist with any other bureau of the government?

A. As a research associate at the National Bureau of Standards, while working with the Dry Cleaning Institute.

Q. Have you had any experience as an analyst with any police department in the country?

A. I was connected with the Metropolitan Police Department of Washington, D. C. for approximately 4 years.

Q. I show you Government Exhibit No. 33, consisting of the envelope and two pages of the ransom note,

979 and tell the jury whether you have ever seen that before?

A. I have.

Q. Did you conduct an examination on that ransom note or envelope?

A. On the envelope.

Q. On the envelope. (Continuing) To detect the presence or absence of blood?

Testimony of Edwin R. Donaldson

A. Yes, sir.

Q. Will you tell the jury how you made that examination?

A. There were stains appearing along the edge and on the face of the envelope which had the appearance of blood. Now portions of this stain were carefully removed and examined in the laboratory following the customary procedure, and it was determined to be blood.

Q. Can you go further and say whether or not it was human blood, or just blood?

A. Just blood.

Q. With reference to any adhesive tape that was forwarded to the laboratory, I will ask you if you made an examination of the adhesive tape to determine the presence or absence of any foreign substance on that adhesive tape?

Mr. Hogan: Now that's objected to.

The Court: It isn't shown what adhesive tape it was, is it?

980 Mr. Hogan: That is the point of objection.

Q. Well, did you examine the adhesive tape that was found in Apartment 2 at 2735 North Meridian Street?

Mr. Hogan: Now that is still objected to unless he can show if he knows—

The Court (Interrupting): I don't know that you have shown that the adhesive tape found in that apartment reached this man. He would not know that it was that adhesive tape except hearsay, would he?

Q. Did you receive in the laboratory, after October 16, 1934, any adhesive tape from the Indianapolis office of—

The Court (Interrupting): I don't believe, Mr. Brown, that you have laid the foundation by any witness that it was sent.

Mr. Brown: I don't believe I have but I thought I could get the other witness back to show that. I don't know that he received it but I am just going to ask him if he did or he didn't.

The Court: All right.

Q. On or after October 16, 1934, did you receive any sample or samples of adhesive tape which were forwarded to you by the Indianapolis Office of the Federal Bureau of

Testimony of Edwin R. Donaldson

Investigation?

981 Mr. Hogan: That is objected to, if Your Honor please, on the basis that it might have been any adhesive tape.

The Court: He is just asking him if he received any; he has not asked him what he found about it yet.

Q. (Continuing) And upon which you conducted an analysis?

A. I received adhesive tape but I did not conduct a chemical analysis thereon.

Q. Did you examine that adhesive tape to determine the absence or presence of any substance?

A. I did.

Q. Did you come to any conclusion?

Mr. Hogan: Now that is objected to.

The Court: The objection is sustained for the present.

Mr. Brown: You may ask the witness.

Cross-examination by Mr. Hogan.

Q. Mr. Donaldson, you stated a moment ago that you did not ascertain whether or not the blood that you, or the substance that your chemical analysis determined was blood was human blood or animal blood. Why didn't you determine that?

982 A. Due to the small amount of material on the face of the envelope, and being advised—

Q. (Interrupting) Not what you were advised, now, but what your chemical analysis showed?

A. That it was blood.

Q. Then you can't state here whether the substance that you found on there and analyzed was human blood or animal blood?

A. That's right.

SAM K. MCKEE, was recalled by counsel for the government and was examined and testified as follows:

Redirect Examination by Mr. Brown.

Q. State your name to the jury?

A. Samuel K. McKee.

Testimony of Sam K. McKee

Q. You are the same Samuel K. McKee who testified on this case on yesterday, aren't you?

A. I am.

Mr. Hogan: If Your Honor please, I don't know whether they are entitled to recall this witness. They did not ask for the privilege of recalling him.

The Court: Have you any authority on that point, Mr. Hogan?

983 Mr. Hogan: No, only it is just my idea that you have to have permission to recall or, rather, indicate your intention to recall.

Mr. Brown: Well, Your Honor, I don't think it is of sufficient importance to take a chance, so the witness may stand aside.

The Court: All right.

984 CHARLES A. APPEL, called as a witness in behalf of the Government, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Brown.

Q. State your name to the jury.

A. Charles A. Appel.

Q. Where do you live, Mr. Appel?

A. 3510 Quesada, Washington, D. C.

Q. Is that Northwest?

A. Yes, sir.

Mr. Hogan: How do you spell the name of the street on which you live?

The Witness: Q-u-e-s-a-d-a. It is a little street, runs five blocks, in the Northwest section of the city.

Q. Where are you employed, Mr. Appel?

A. In the Federal Bureau of Investigation.

Q. In what division of the Bureau are you employed?

A. I work as an examiner in questioned documents in the laboratory of the Bureau, in Washington, D. C.

Q. How long have you been employed there?

A. I have been employed in the Bureau, this is my twentieth year.

Testimony of Charles A. Appel

Q. What type of work do you do in the Bureau—specialize in?

A. I examine handwriting and typewriting specimens for the purpose of determining the identity of the writer or whether it is the same machine, any question that concerns some paper with writing on it.

Q. In connection with the identification of mechanical impressions, typewriting and printing?

A. Yes, sir.

Q. Of what schools or colleges are you a graduate?

A. I graduated from the Georgetown University Law School in Washington, D. C.

Q. With reference to any special training that you have had to fit yourself for your work, can you tell the jury what special training you had?

A. Well, I attended lectures of J. Fordyce Wood of Chicago, Albert S. Osborne of New York, and Dr. Wilbur Souder of the Bureau of Standards of Washington, D. C. I read books on the subject of handwriting and document examination, organized the laboratory of the Bureau.

Q. With reference to your practical experience, have you had occasion to perform many or few experiments and much or little research, and have you examined many or few specimens in the course of your nineteen years experience in the Bureau?

A. I have examined very large numbers of specimens, hundreds of thousands of specimens. I have been training the examiners in the F.B.I. laboratory for years.

986 Q. Have you had occasion before this to testify in state, federal and military courts in this country?

A. Yes, I have.

Q. Have you testified in criminal trials before this?

A. All over the United States.

Q. I'll hand you Government Exhibit 49, which has been identified heretofore and testified to as a copy of the ransom note, typed on Corona portable typewriter, by Special Agent J. D. Reynolds, and ask you if you received that in the Bureau.

A. Yes. This was submitted to me for examination in the laboratory.

Testimony of Charles A. Appel

Q. I'll hand you Government Exhibit 50, being the heading of the Aetna Casualty & Surety Company, signed Thomas H. Robinson, Jr., and ask you if that was received in the laboratory for examination.

A. This also was submitted to me for examination in the laboratory.

Q. I'll hand you Government Exhibit 33, being the envelope and two pages of the ransom note, and ask you if you received that in the laboratory for examination and comparison with known specimens.

A. Yes, I did.

Q. I'll hand you Government Exhibit 48, being
987 the letter to "The Custodian," typed "Mr. Kennedy, Apartment 2, 2735 North Meridian," and ask you if you received that in the laboratory for examination and comparison with known specimens.

A. Yes, this was submitted to me for examination.

Mr. Brown: It might save a little time if I show all of them to him at one time without putting him back on and off the witness-stand.

Q. I'll hand you Government Exhibit 51, which is a letter addressed to Mr. W. A. Smith, Special Agent, Federal Bureau of Investigation, U. S. Department of Justice, Kansas City, Missouri, and signed "Thomas H. Robinson, Jr." and ask you if you received that in the laboratory for examination with known specimens.

A. Yes, I did.

Q. I'll hand you Government Exhibit 52, being headed "Preliminary and Declaration Sheet, Tennessee Valley Authority," signed "Thomas H. Robinson, Jr." and ask if you received that for examination and comparison with known specimens.

A. Yes, I did.

Q. I'll hand you Government Exhibits 27 and 28, being guest registration cards at the Tyler Hotel, one dated September 7th, the other dated October 8th, and ask you to examine those and tell the jury whether you received those for examination and comparison with known specimens.

988 A. Yes. These were submitted to me for examina-

Testimony of Charles A. Appel

tion.

Q. The name appearing on these registration cards being "John Ward"?

A. Yes, sir.

Q. I'll hand you Government Exhibit 53, consisting of a single sheet of paper, the last entry being Mr. Jerry Dobson, South Bend, Indiana, and ask you if you examined that for comparison with known specimens.

A. Yes. This was submitted for the comparison of the last name, Jerry Dobson, South Bend, Indiana.

Q. I'll hand you Government Exhibit 26, which is in the name of John W. Ward, and on which there appears "Saunders-U-Drive-It-Yourself System," and ask you if you received that for examination and comparison with known specimens.

A. Yes, I did.

Q. I'll hand you Government Exhibit 46, which is signed "Lafayette Court Company by J. R. Johnson," and "Thomas W." or "H. Kennedy," I am not able to determine which, and ask you if you received that and conducted an examination of it.

A. Yes. That was submitted to me. Yes, sir.

Q. I'll hand you Government Exhibit 54, guest registration card, "T. M. Warner," the "Waldorf-Astoria, New York," and ask you if you received that and examined it.

989 The Court: What is the initial?

Mr. Brown: T. M. Warner.

A. Yes, I did.

Q. I'll hand you Government Exhibit 56 and Government Exhibit 57, 56 being on the heading "Patterson & Schmidt," order for Plymouth 4D Sedan, signed "Leslie K. Burgess," and ask you if you conducted an examination and comparison with known specimens.

A. Yes, I did.

Q. Government Exhibit 57, on which there is printed "Leslie K. Burgess, 2042 Long Beach Road, Long Beach, New York," and ask you if you conducted an examination of that.

A. Yes, I did.

Testimony of Charles A. Appel

Q. I'll hand you Government Exhibit 56, being the heading "Hotel St. George," "T. Morton Wallace," and ask you if you received that and conducted an examination of that document.

Mr. Hogan: What was that number, Mr. Brown?

Mr. Brown: 55.

A. Yes, I did.

Q. I'll hand you Government Exhibit 59, consisting of a guest registration card, "Ritz Carlton Hotel Corporation," "Morton Wallace," and ask you if you conducted a comparison and examination of that document.

A. Yes, I did.

Q. I'll hand you Government Exhibit 60, head-
990 ing "Storage Proposal, Forrest Hills Fireproof Storage," signed "J. H. Baker," and ask you if you received that and conducted an examination with known specimens.

A. Yes, sir, I did.

Q. Government Exhibit 62 apparently is a guest registration card, and the names "Neill Morton and wife" appearing thereon, and ask you if you received that and conducted an examination and comparison with known specimens.

A. Yes, sir, I did.

The Court: Any designation of the hotel or anything?

Mr. Brown: Ambassador Hotel at Los Angeles, it is numbered 434. I think that appears from other evidence. I don't see it on here. I might be looking at the wrong place, but I don't seem to see anything.

Q. I'll hand you Government Exhibit 63, Los Angeles Biltmore, the last entry being "Leslie Burgess and Wife, Highland Park, Illinois," and ask you if you received that and conducted a comparison and examination with known specimens.

A. Yes, I did.

Q. I'll hand you Government Exhibit 64, Constance Hotel, Pasadena, California, "Mr. and Mrs. L. K. Burgess," and ask you if you received that and conducted an examination of that.

A. Yes, I did.

Testimony of Charles A. Appel

991 Q. And Government Exhibit 65, Constance Hotel, "Mr. and Mrs. L. K. Burgess," and ask you if you received that and examined that.

A. Yes, sir.

Q. I'll hand you Government Exhibit 66, being application for membership in the Automobile Club of Southern California, "Leslie K. Burgess," and Government Exhibit 67, being membership card, Automobile Club of Southern California, and ask you if you received those and conducted an examination and comparison with known specimens.

The Court: Is there any writing on 67?

The Witness: No.

Mr. Brown: Apparently no, there is no handwriting.

A. I examined both of those specimens.

Q. Now, Mr. Appel, would you outline for the jury what method or procedure you followed in the examination and comparison of the questioned documents with the known documents?

Mr. Hogan: If Your Honor please, I want to interpose an objection at this time to the testimony of this witness, on these grounds. There has not been furnished to the defendant or his counsel any notice that they intended to make any comparison between a genuine and questioned specimen of the handwriting, and under the Kentucky Statutes it is a necessary requirement that a notice be given to that effect.

992 The Court: This is not a case in the Kentucky Court.

Mr. Hogan: I know, Your Honor, and there is not, so far as I know, any federal law that makes that requirement, but under the Erie Railroad decision I think where there is no law—

The Court: That applies to civil cases.

Mr. Hogan: That's my point, Your Honor, please. If you will let me finish my statement for the record, please.

The Court: Yes.

Mr. Hogan: There is no federal law, so far as I know, that makes the requirement to furnish the notice of the intention to prove genuine or questioned documents, but there is a Kentucky statute that makes that requirement,

Testimony of Charles A. Appel

makes the giving of notice a necessary requirement where signatures or specimens are in question. Therefore, there not being any federal law, my position is that the Kentucky law prevails and my basis for that or the legal opinion or basis of that is, of course, the Erie Railroad decision or the opinion from the Supreme Court known as the Erie Railroad case.

The Court: The Supreme Court has held, quite often,

I believe, that criminal trials in Federal Court are
993 not governed by the state laws. The case of Erie

Railroad against Tompkins, which you refer to, deals with the civil trials, or trials in civil suits, not criminal trials. The objection will be noted and overruled. Exception.

Q. All right, Mr. Appel, just outline the method for determining the examination of the questioned documents with the known specimens.

A. I analyzed the typewriting on the ransom letter and the other questioned letter for the purpose of determining the irregularities in the manner in which the type is impressed on the paper, due to mechanical defects in the typewriter, and I made the same comparison with the known standards which were written on the machine found in the hide-out.

Mr. Hogan: Now that's objected to because of the words "found in the hide-out."

The Court: All right, objection sustained to those words. The jury will not consider that part of the answer.

A. (Continuing) On the known typewriter standards which were submitted to me for comparison. I made an analysis of the handwriting, first the hand-lettering on the ransom letter, and compared it with the standards of known hand-printing and handwriting. I made analysis of the handwritten signatures in these various names on the
994 different hotel registers. The purpose of all that was

to ascertain the habits of the writer and compare those habits with the habits displayed in the known specimens. The analysis was all based on an examination of the specimens themselves. After I got through, I prepared enlargements of those so that I could point out the char-

Testimony of Charles A. Appel

acteristics and evidence which I found on those specimens, and I have brought those enlargements here for the purpose of illustrating that evidence.

Q. All right, from your examination and comparison with the known specimens of all questioned documents that I have submitted to you in the form of various Government exhibits, did you form any opinion?

A. Yes, I did.

Q. Let me finish—did you form any opinion as to the person or typewriter that was used to write or print each of the questioned documents in evidence?

A. Yes, with the exception that there were two, that automobile card had no questioned writing on it and there was an envelope in that—there were two specimens submitted, one an envelope, which had no questioned writing on it.

Q. Now, would you refer to the charts that you have. Perhaps I had better get his opinion first with reference to Government Exhibit 33, which was submitted to you for the purpose of comparing the typewriters.

995 Did you come to any opinion as to the type of machine that that ransom note was typed by?

A. Yes. I came to the conclusion this was written on a Corona typewriter.

Q. With reference to Government Exhibit 48, did you form an opinion as a result of your examination, what type of typewriter produced that letter addressed to "The Custodian"?

A. I came to the conclusion that this typewriting on Government's Exhibit 48 was written on the same Corona typewriter as the exhibit you just showed me.

Q. The ransom note?

A. The ransom note; yes, sir.

Q. With reference to Government Exhibit 52, consisting of certain handwriting—hand printing and signature—did you come to any conclusion as to the genuineness of that signature when compared with the known specimens which you have heretofore testified you examined, and if you did come to such an opinion please tell the jury what the opinion is.

Testimony of Charles A. Appel

The Court: Whom is that signed by?

Mr. Brown: T. H. Robinson.

A. I came to the conclusion this signature "Thomas H. Robinson" was written by the writer of the known writing signed "Thomas H. Robinson, Jr."

996 Q. Being Government Exhibit 51?

A. Being Government Exhibit 51, and that the hand printing on this Exhibit 52, Tennessee Valley Authority application, was written by the writer of the Aetna application.

Q. Being Government Exhibit 50?

A. Being Government Exhibit 50.

Q. Now I am going to hand you these exhibits and let you, in the interest of saving time—let you examine them yourself without me asking you about each one. You can discuss each one of them and tell the jury your opinion, if it was your opinion, that they were the same, or if it was your opinion that they were different from the known specimens that you have heretofore testified about.

A. On Government's Exhibit 66, the application for the Automobile Club, Southern California, I came to the conclusion that the address, occupation, date and signature "Leslie K. Burgess" were written by the writer of the known specimens which were indicated to me were written by Thomas H. Robinson, the defendant.

On Government's Exhibits 65 and 64, cards of the Constance Hotel, Pasadena, California, I came to the conclusion that the writing of the names "Mr. and Mrs. L. K. Burgess" and the address of "132-24 Maple Avenue, Flushing, New York, N. Y." on the one card, which is Exhibit

65, and the address "2042 Long Beach Road, Long Beach, New York" on the other card, which is exhibit 64, were written by the defendant.

997 On Government's Exhibit 63, the registration sheet of the Los Angeles Biltmore Hotel, I came to the conclusion that the last entry, "Leslie Burgess and Wife, Highland Park, Illinois" was written by the defendant.

With reference to Government's Exhibit 62—

Q. I believe that's the Ambassador Hotel, Los Angeles. Mr. Jenkinson introduced that.

Testimony of Charles A. Appel

A. (Continuing)—I came to the conclusion that the signature or the name, rather, "Neill Martin and Wife" and the address "160-12 Hillside Avenue, Hollis, Long Island, New York" was written by the defendant.

With reference to Government Exhibit 60, the Forrest Hills Fireproof Storage, I came to the conclusion that the signature "J. H. Baker" in two places was written by the defendant.

Mr. Hogan: If Your Honor please, he is designating them as written by the defendant. I think that's a mis-designation there. I think he should say either by the writer of the known specimens or the other specimens.

Mr. Brown: The known specimen is Thomas H. Robinson, Jr.

The Court: Written by the same person, you mean, as who wrote the known specimen?

The Witness: That's right, by the writer of 998 the known specimens which were signed "Thomas H. Robinson, Jr."

With reference to Government Exhibit 55, the Hotel St. George, I came to the conclusion that the name "T. Morton Wallace, 320 North Ridgeland Avenue, Oak Park, Illinois" was written by the writer of the known specimens, signed "Thomas H. Robinson."

With reference to Government Exhibit 59, the Ritz-Carlton Hotel Corporation, New York City, I came to the conclusion that the name "Morton Wallace, 320 North Ridgeland Avenue, Oak Park, Illinois, Chicago Board of Trade," was written by the writer of the known specimens, signed "Thomas H. Robinson."

The Court: Those specimens signed "Thomas H. Robinson" or "Thomas H. Robinson, Jr."

The Witness: Thomas H. Robinson, Jr.

Mr. Brown: Thomas H. Robinson, Jr., both of them.

A. (Continuing) With reference to Government's Exhibit 56, an order for a Plymouth sedan of Patterson & Schmidt, dated April 5th, 1935, I came to the conclusion that the signature of the purchaser, "Leslie K. Burgess," was written by the writer of the known specimens, signed "Thomas H. Robinson, Jr."

Testimony of Charles A. Appel

With reference to Government's Exhibit 54, the Waldorf-Astoria, New York, I came to the conclusion that
 999 the name "T. M. Warner"—there is the name of the street, "O-n-w-e-r-t-i-a Drive," I am not sure of the "r," Lake Forrest, Illinois, was written by the writer of the known specimens, Thomas H. Robinson, Jr.

With reference to Government Exhibit 46, which is a leasing agreement with the H. H. Woodsmall Agency, I came to the conclusion that the signature of "Thomas W. Kennedy" was written by the writer of the known specimens, "Thomas H. Robinson, Jr."

With reference to Government Exhibit 26, which is an agreement of the Saunders-Drive-It-Yourself System, I came to the conclusion that the pencil signature "John W. Ward" was written by the writer of the known specimens, Thomas H. Robinson, Jr.

With reference to Government's Exhibit 53, which is a page of registrations of different people, I came to the conclusion that the last signature, "Mr. Jerry Dobson, South Bend, Indiana" was written by the writer of the known specimens, "Thomas H. Robinson, Jr."

With reference to Government's Exhibits 27, the Tyler Hotel, I came to the conclusion that the writing "John Ward, 211 Union Avenue, Memphis, Tennessee," and with reference to Government Exhibit 28, the Tyler Hotel, the name "John Ward, 211 Union Avenue, Memphis, Tennessee," I came to the conclusion that they were written by the writer of the known specimens, "Thomas
 1000 H. Robinson, Jr."

Q. Now, Mr. Appel, were charts prepared of the known specimens and the questioned documents after you reached your conclusion?

A. Yes, sir.

Q. Do you have those charts here?

A. Yes, I do.

Q. Would you hang them up here and explain to the jury the reason for your opinion and conclusion?

The Court: You say they were prepared after or before?

Q. When were they prepared?

Testimony of Charles A. Appel

A. Those charts were prepared within the past two weeks.

Q. They are enlargements of these known and questioned documents, are they not?

A. Yes, sir.

Mr. Hogan: Now, if Your Honor please, until they go further and show that they are accurate enlargements, I will certainly object.

The Court: Of course, they will have to be accurate. The witness will have to be examined on that.

Q. They are exact enlarged reproduction of the known and questioned documents, are they not, Mr. Appel?

A. Yes, sir. These were prepared by photographing the original documents and producing an enlarged print. These prints were then compared with the originals, and I am prepared to state that they are accurate enlargements of the originals. The only thing that's additional on there are some marks which I placed on there in order to describe the characteristics.

Q. All right, hang them up.

Mr. Hogan: Did you make the enlargements, yourself, Mr. Appel?

The Witness: No, sir.

Mr. Hogan: If Your Honor please, I think it would have to be shown that he either made them or they were made under his supervision.

The Court: Let the witness say how they were made.

The Witness: They were made under my immediate supervision and after they were made I compared them with the originals. They are exact, accurate enlargements of the originals.

The Court: Those that you are putting on there are the same kind of enlargements of known documents?

The Witness: These are photographs of the questioned documents on my left, and those on my right are the known documents.

The Court: Were those enlargements of the questioned documents made in the same way?

The Witness: Yes, sir. They were all made under my immediate supervision and under my instructions,

Testimony of Charles A. Appel

and I observed the process, and then after they were made they were compared with the originals.

The Court: What is that small one?

The Witness: These are the rest of the questioned documents, hotel registration cards.

The Court: Made in the same way?

The Witness: They were made in exactly the same way.

The Court: I think, Mr. Brown and Mr. Hogan, we will go into some little time before we start into the examination of this witness on the basis of his opinion. We better take our recess.

Members of the jury, we will take a short recess at this time. Do not discuss the matter among yourselves or with anyone, or permit anyone to talk about it in your presence. A short recess.

A short recess was taken, after which the hearing was resumed, as follows:

1003 After recess the following proceedings were had:

Direct Examination Continued by Mr. Brown.

Q. Mr. Appel, would you explain those charts to the jury, and point out such features that in your opinion you found to be present both in the known specimen and in the questioned documents? I will not interrupt you by questions. Just explain them in your own way, referring, of course, each time to the known specimen and the unknown specimen; and you characterize the known specimen.

A. I will examine first Exhibit No. 33, the ransom typewritten letter. In an examination of typewriting, the analysis is for the purpose of finding defects or variations from the perfect in the way in which the different letters are struck on the paper. I have marked numbers to refer to certain characteristics.

No. 1 refers to the letter "z." In the small letter it strikes a little high compared to the rest of the letters on the line of writing. At the same time the capital letter "S," the base of it is emphasized or bigger because the letter strikes on the bottom first and therefore strikes heavier on the bottom. It also seems to slant slightly to the left

Testimony of Charles A. Appel

in the capital letter and in the smaller letter.

1004 Now we find that same characteristic in the letter "s" in the ransom letter. It is a little high for both the capital letter and the small letter. In the capital letter, the letter at the bottom is much wider and more emphasized because it strikes there first. The letters are all supposed to strike all at the same time. It also seems to slant to the left. These are measured by instruments in the laboratory.

No. 2 refers to the letter "A." These capital "A's." This letter also slants slightly to the left and it strikes heavier on the left side. It isn't quite as clearly visible as the letter "s." I have marked some of them here with the number "2."

That same characteristic occurs in the known writing on the typewriter. That letter strikes heavier on the left, and it seems to slant a little. The small letter is a little bit low.

The small letter "w" and the capital letter "W" are numbered No. 3. That letter strikes high. It is quite high compared to the other letters. At the same time the upper right hand portion of that letter does not strike as heavy as the other portions and the small line which occurs there is for that reason apparently deformed, or not as clear as the other letters.

1005 No. 4 refers to the letter "m" which strikes on the right side first. It is heavier on the right side. It also seems to slant a little to the right. That same characteristic exists here in the known. It strikes a little heavier on the right and it slants a little toward the right. That is not as easy to see as some.

No. 5 is the letter "y." On the upper right hand portion the horizontal line seems to be a little abbreviated and not quite as long as it should be. You will see that also in the known writing. I have only marked two of these.

No. 6 refers to this underline. This is a short bar that is struck one after the other to make a long line. This particular bar strikes heavier on the right or it is a little wedge-shaped and it causes the line to look wedge-shaped—

Testimony of Charles A. Appel

it is not quite as wide a line on the left as the right.

The same thing appears on that line in the known writing. It strikes heavier on the right because the same piece of metal is heavier on the right. It makes the whole line wedge-shaped.

The letter "T"—the capital letter "T" has a very distinctive characteristic readily seen with the naked eye. It is marked No. 7. This letter is emphasized on the left, at the top particularly. You will see it wherever it is, whether it is marked No. 7 or not. If it is struck
1006 heavier it is shown more plainly. At the upper left it will be seen that the letter strikes heavily and it is wider there either because the letter is actually deformed at the top or because it strikes heavier on that side. You will see it here and also in the known writing. Sometimes the little down line on the upper right does not seem to register at all—it does not strike as hard.

The small letter "g" is characteristic No. 8. In the questioned writing here on the left in the word "menacing" and in the word "right" the upper portion of that letter strikes first which makes the upper portion darker and wider than the lower portion. You will see that same characteristic here in the known typewriting because the letter is adjusted on the arm in such a way that the upper part of the letter strikes first.

Now those are some of the characteristics I found in this typing. It is not any particular one of the characteristics but it is the combination of characteristics and the same thing in the known typewriting which leads me to believe that they were written on the same typewriter.

Q. All right, Mr. Appel, refer to some of the other exhibits and we will go through some of those?

A. The second page of the ransom letter has the same characteristics although I haven't marked them. The "s" is higher, the "t" strikes heavier on the left, etc.
1007 There is no use to go into all of that.

The front page and this page has hand-lettering on it. That hand-lettering was compared with the hand-lettering on the Aetna application. The hand-lettering on the ransom letter is scribbled or written scrawly all over

Testimony of Charles A. Appel

the area where that writing appears at the top of the page. Now I do not believe that would be done simply as the result of carelessness. These letters are distorted and I believe them to be disguised in an effort to hide the characteristics of the writing of the writer.

You will see down here in the name of the intermediary at the bottom that an effort has been made to curve those lines so as to make them most unnatural.

Now, comparing that with the known hand-lettering you have the first letter, "T." This is written in a characteristic way with a down stroke and a cross bar at the top is written slanting up. You see in the known hand-writing in the word "Thomas" that does not occur, while in every place else it is true. There is a tendency in the known writing for the writing to slant in this way, slanting very much the same way as the questioned writing, and the horizontal line on the "T" slants up. I marked that as the first characteristic.

Second, the letter "f" consisting of a downward stroke and two horizontal lines, the second horizontal line
 1008 is shorter than the top one, and the other one slants up. The same exists in the "t" and remains with the questioned writing because the writer did not realize that that was his writing habit. Here it is in this letter "f."

The letter "s" is peculiar in that the bottom portion of that line, instead of being curved, it is curved sometimes—it is twisted but there is a tendency to curve the upper portion and then straighten it out. That also shows in the dollar sign or any letter similar to that "s." That characteristic is shown by the No. 3 in the known hand-printing. I do not mean that every time, or in absolutely every instance that is true, but simply that there is a tendency to do that. It is because it is a habit and that habit came out in writing these letter "s's" in the ransome note. At the same time there is a tendency to make a small down stroke in the beginning of the letter "s." That also is a habit whereas in the "s" in the known writing it is not always as plain in one place as it is in another.

The letter "m" is made in two ways. This is a printed

Testimony of Charles A. Appel

"m" in the word "same" and in the word "misses" in the ransom letter. The letter appears in that way and also as a partial script letter as in the word "mister" here. Now the script form of that letter is written in the top of the ransom letter. That is made peculiarly in that there are three separate and definite humps—one is made
 1009 with the hand lifted and another is made with the hand lifted, and the third is made that way.

Now that is the same way it is made in the known writing. The "n" is just a part of the "m" and it exhibits the same thing in the known hand writing although in the questioned writing it is the capital printed letter and follows the same form. I marked that No. 5.

A very peculiar characteristic occurs in the questioned hand-printing marked No. 6. It is the letter "u." This "u" is made with a down stroke. Instead of curving on up to the right to make the letter, the writer lifted the pen and made an entirely separate and distinct stroke. Some people who make this letter with two strokes curve it on the right part of the letter, but here it is on the left.

You will find that same characteristic in the known hand-printing. There is no attempt to curve that down stroke, then the hand is lifted and the curve stroke is used to complete the letter. That is a very peculiar type of "u." I have never seen one like that exactly.

Now you will see that that exists here in the questioned hand-printing. This is marked No. 6.

The letter "y" is marked No. 7. This letter consists of a long slanting stroke with a little additional line so as to complete the upper portion. In the known hand-
 1010 printing they make the same letter, a long stroke with the little line at the top, and in proportion to the length of that line the size of the whole letter is typical.

I have marked this small letter "f" with a No. 2 just as the big letter "F" was marked No. 2 because that small letter also presents a peculiar characteristic as does the "u." It is the peculiar unusual habits which assist in the identification. There is a curved line down and then this cross line. The down stroke curves and it has a tendency to curve two ways. It is a small printed letter and not a

Testimony of Charles A. Appel

capital.

The letter "o" in the questioned writing is made by beginning a stroke at the top which comes down rather straight and ending right there. It may be curved around and not symmetrical, but the thing that I am calling attention to is the fact that the opening is almost exactly in the center portion of that letter. Now that is the way that letter is made in the known writing. In other words it comes straight down in the upper center portion of the letter and that is where the letter is closed. You see it here in the known and the line comes up exactly similar to the way it does in the questioned. It is an unconscious motion habit. Some people make it differedt but not exactly with the same motion. It is the tendency to 1011 which I call your attention.

The figure "5" has a long horizontal stroke, and—

Q. (Interrupting) Suppose we go along a little faster and go through some of the other exhibits?

A. All right. Here we have some more typewriting, on Exhibit No. 48. You will find the same characteristics. The "s" which is heavy on the bottom, and the "a" which is slightly slanting to the left, and the "t" which is heavy on the left, and the "g" heavy at the top.

One feature of that typewriter which I have not mentioned is the fact when you strike a letter hard it has the tendency to strike it twice. That exists here in the letter "t." You will see here that it is struck over twice, with a tendency to make it heavy.

The handprinting on this Tennessee Valley paper, which was Exhibit No. 52, exhibits the same characteristics. The "s" with the straight line at the bottom. The "t" with the line at the top which tends to slant up. The "e" with the tendency of a straight line at the bottom. The "y" with a long slanting line, with a little short line to complete it.

Here for the first time we have the signature of Thomas H. Robinson Jr.

Mr. Brown: Let us examine it, Mr. Hogan. I think we have blocked part of it out but I want to be sure.

Testimony of Charles A. Appel

1012 If you will come over here to the back side, we can examine it upsidedown.

(Mr. Brown and Mr. Hogan examine the specimen.)

Q. All right, now you may turn that over.

Mr. Brown: I would like for the record to show that on government Exhibit No. 51 there has been superimposed on the face of the exhibit a piece of brown paper completely covering the words except the address and,

"July 1, 1936

"Dear Sir:

"Please turn over to my mother Mrs. Thomas H. Robinson Sr. all of my personal effects that are free and unattached.

"Thomas H. Robinson, Jr.

"Witness: A. E. Farland

U. S. F. B. I. Kansas City, Mo."

A. We are now dealing with writing characteristics. In the first place the slant has the same characteristic and it is exactly the same on the known and the questioned writing.

Then I have marked No. 1 to note the tendency of the writer to write above the line. A very habitual thing. You will see it in the known signature, and also at other places. Wherever there is writing, he has a tendency to write just above the line. I have marked there numbers to indicate characteristics.

No. 2 is to show the tendency to prolong the letter
1013 to the right. He did not do that on the "Jr" here, but he did on here and on other portions of the known writing. If you compare this signature to Thomas H. Robinson Jr. with the questioned and the known you will find the shapes of these letters are just the same, the reason being that the signature is written so frequently that the habitual letters are deformed and become characteristic of the writing habits of this man. The motions he uses are his, and nobody else's. For instance, the capital letter "H" in the middle initial does not look like an "H" at all. The

Testimony of Charles A. Appel

first line is short and the first and second portions are disconnected and this second stroke is long.

Now that handwriting on that exhibit was compared with each of these registration cards and all of the different characteristics were analyzed. The first characteristic I have referred to was the habit of writing just above the line. You will see it here in the registration cards at the Tyler Hotel. Instead of writing "John Ward" on the line, the writer writes it just above the line just as he does it here in the known handwriting.

The No. 2 denotes the tendency to extend the end lines or finishing lines. A sort of extension is added to the last stroke on the last word on the line. Now that does
 1014 not always occur. For instance, here is the letter "e." That stroke was not prolonged very far. Here is the letter "d" on the questioned and here is the letter "d" on the known.

But the third characteristic is the letter "e" for the reason that in writing that as rapidly as he has done, the writer has made what looks like the letter "i." There is no loop in it at all, because he has a fast up and down motion and he is in a hurry in an effort to get through. You will find that here in the questioned at the registration card of the Tyler Hotel, and here we see it in the known.

The fourth characteristic that I have marked is the period. It is frequently written directly under this extended line at the end of the word. It is not above the line. You see it frequently in the word "avenue." Here it is in the abbreviation in the word "Mo.," and here it is in the word "unattached," directly under that stroke. Here it is; and in writing a name like this, there is a tendency for these periods to be one a little higher than the other. You see those same characteristics in the signature of Jerry Dobsen, South Bend, Indiana. You will see that on government exhibit No. 33. Here are the extended lines, the tendency to write above the line, and the letter "e" which becomes a line instead of a loop. The capital letter "M" is peculiar in that the first down stroke
 1015 is very long, the second one is shorter and the third one is shorter again. The whole letter "m" seems

Testimony of Charles A. Appel

to get smaller at the end.

The same thing in the word "w" because it is written very rapidly. The first stroke is curved at the top and the whole letter seems to slant downward. Here in the known you will see a big long stroke way up high and the second is slanting. Instead of it being joined up and down, the whole thing is curved.

Here is an "m" in the known with a long first stroke and shorter second stroke. It also tends to slant.

Now those same characteristics and others appear in all of these different registrations and different names, different in the name of Leslie K. Burgess and wife at Highland Park, Illinois, on Exhibit 63. The writing is above the line. There is a line there provided for the writer to write upon but instead of that he has written above the line because it is his habit.

In this particular registration, there is a difference in the letter "i." That letter is a very peculiar one. It is not written with the same motion other people use but it looks like, very much like a "9" some foreign people use. Here it is in the known handwriting. It is a variation from that of most people. Here in this registration we also have the capital letter "H" just as it occurs in the known signature of Thomas H. Robinson. The first and the last portion are not joined at all, and the stroke goes around leaving an impression of an increasingly high letter.

The letter "k" is also peculiar. This man has a rapid up and down motion causing the letters "k" or "h" to join in this portion so you cannot be sure exactly how that letter is shaped. After making the loop it is frequently almost a straight line. The lower portion of that letter is written over so you cannot always be sure exactly how it does look.

Then, again, we have the period after the "l" which is written directly underneath that stroke just as it occurs in the known.

Here we have the letter "e" written like the letter "i" because it is written so fast there is no loop. Here on the registration, Government Exhibit No. 62, "Neal Martin

Testimony of Charles A. Appel

and wife" have the same characteristics in the capital letter "H" as it is in the known signature, and the capital "I" and the long stroke after the word "avenue," and the period underneath it.

And the signature in the registration of Leslie K. Burgess, Government Exhibit No. 64, with the capital letters, long first stroke, abbreviated second stroke. We
1017 have the long stroke at the end of a word, and we have the periods which follow the letters and appearing directly under the line. We think the fact that the man tends to write above the line of writing and not on it.

The letter "e" which looks like an "i" is there. Here is "u," with a period directly under that line.

Here is the signature of John W. Ward on Exhibit No. 26, with pencil. We have in the first place the capital letter "J" which is characteristic of the signature of Thomas H. Robinson, and a large loop at the upper part of the letter and a thin one down toward the bottom. Here we have it in the questioned writing. The lines cross at the beginning and ending of that letter. Instead of being further apart they all come together right at that place. The upper portion is made very large at the beginning, and then it narrows at the top to produce the characteristic shape of the letter.

The letter "w" has a long first stroke and rounded at the center stroke. Here is the slant.

The small letter "r" is also peculiar in that there is a little wiggle and an additional curve consisting of a curve in an effort to begin that letter, the upper portion of it.

It is not a small straight line, but it is a complicated
1018 "r" because the upper stroke is higher than the other. I have marked it No. 12. That does not always appear. In other places that letter is simply curved over and not like an "r" at all. So you have two different habits in the curving of that letter.

In the word "Ward" we have a little wiggle in the upper portion of that letter.

Q. If you will proceed rather rapidly through the rest—

A. (Interrupting) Well, I have marked these same

Testimony of Charles A. Appel

curves—the capital “W” with the long stroke at the end of the letter; and the long stroke at the end of the line of writing.

In Government Exhibit No. 60, the name J. H. Baker is written between two lines above the line of writing. It does not occur on any one line. We have the letter “j” which is very similar to this in the known—the “h” and “k” are twisted at the top.

It is a little difficult to see the writing on Exhibit No. 54 because that was a photostatic copy, but the characteristics are all there. He writes above the line of writing. He extends the lines, and he puts the period right underneath that line.

Each and every one of these exhibits was examined for the characteristics which I have mentioned. It is not the “w,” not the writing above the line of writing, not

1019 the “m” nor the “r” nor the period. It is not any individual one of those characteristics; but it is the combination in the questioned writing and the same combination in the known writing which caused me to come to the conclusion that these questioned exhibits were written by the writer of that known writing.

Mr. Brown: That is all.

Mr. Hogan: No questions.

Mr. Brown: Now, Your Honor, I would like to offer in evidence Government Exhibits Nos. 26, 27, 28, 33, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 59, 60, 62, 63, 64, 65 and 66, which was included in Mr. Appel's testimony.

The Court: You want to do what with them?

Mr. Brown: I think they were tentatively introduced until they were identified by this witness.

The Court: All right.

(The above documents were filed with the record, having been marked before.)

ROBERT H. LAUGHLIN was called as a witness by the government and after having been first duly sworn was examined and testified as follows:

Testimony of Robert H. Laughlin

Direct Examination by Mr. Inman.

Q. State your name?

1020 A. Robert H. Laughlin.

Q. Where do you live?

A. Washington, D. C.—in the suburb of Brookmont, Maryland.

Q. And your street address?

A. 6220 Broad Street, Montgomery County.

Q. Did I understand you to say that Washington was a suburb of Brookmont?

A. No; I said that Brookmont was a suburb of Washington.

Q. Where are you employed?

A. Federal Bureau of Investigation.

Q. In what capacity are you employed?

A. Chief Clerk at the present time.

Q. Chief Clerk of the Bureau?

A. Yes, sir.

Q. In October 1934 where were you employed?

A. I was employed in Louisville, Kentucky.

Q. And were you so—

A. (Interrupting) Pardon me—did you say October, 1934?

Q. Yes?

A. No. I was employed by the Bureau but I was in Detroit, Michigan at that time.

1021 Q. In May 1936 where were you employed?

A. Louisville, Kentucky.

Q. With the Federal Bureau of Investigation?

A. Yes, sir.

Q. Who was in charge of the Louisville office at that time?

A. Mr. O. C. Dewey was in charge.

Q. On the 13th of May, 1936, did you receive anything from Mr. John Bugas?

A. Yes; I did.

Q. Who was John Bugas?

A. Mr. Bugas was a Special Agent who was from Los Angeles but who was here in Louisville at the time.

Q. What did you receive from him?

Testimony of Robert H. Laughlin

A. I received a quantity of money.

Q. Did you examine and record the serial numbers of that money?

A. I did.

Q. I show you these papers and ask that you tell the jury what they are?

A. These are the work papers that I prepared at that time listing the serial numbers of the bills that were turned over to me by Mr. Bugas, totaling \$4687.64.

Q. I show you Government Exhibits Nos. 36, 37
1022 38, 39, 40, 41, and 35, and ask you if you examined those exhibits?

A. I did.

Q. I will ask you whether or not you compared the Serial Numbers on the currency turned over to you by Mr. Bugas with the serial numbers appearing on government exhibits Nos. 35 through 41?

A. I did.

The Court: Is Mr. Bugas going to testify?

Mr. Brown: Yes, the next witness.

Q. Did you find the serial numbers appearing on the money turned over to you by Mr. Bugas recorded in Government Exhibits 35 through 41?

A. There were some of them in there. There was a total of 466 of the \$5.00-bills that had serial numbers on the bills which were identical with the serial numbers on these government exhibits.

Q. Were they the only ones you found, the \$5.00-bills?

A. Yes, only \$5.00-bills. There was a \$1000-bill; one \$500.00-bill; 7 \$100-bills; three \$20.00-bills; four \$10.00-bills; eleven \$5.00-bills; one \$1.00-bill and \$1.64 in change.

The serial numbers on that money was not on the list

1023 Q. How many \$5.00-bills were turned over to you by Mr. Bugas?

A. 477 altogether, 466 of that number were identical with the bills listed in the list.

Q. I will ask you to file your work papers which you have identified with your evidence as Government Exhibit No. 76.

Mr. Hogan: That is objected to until further qualified.

Testimony of Robert H. Laughlin

The Court: Objection sustained unless Mr. Bugas connects it up in some way.

Mr. Inman: As to the work papers?

The Court: Unless Mr. Bugas links it up.

Mr. Inman: We will do that.

Q. When were those work papers made?

A. The 13th and 14th of May 1934.

Q. Made by you?

A. Yes.

Q. Where did you get the information obtained in those work papers?

A. By getting it from the money and copying it down.

Mr. Hogan: I will reserve my further objection until Mr. Bugas testifies.

1024 Cross-examination by Mr. Hogan.

Q. Mr. Laughlin, you do not know where this money came from that you listed?

A. It came to me from Mr. Bugas.

Q. I mean, you do not know from what source he got it?

The Court: Of your own knowledge?

A. I did not see him get it any place.

Q. That's what I mean. You do not know in other words?

A. That is right.

JOHN S. BUGAS, was called as a witness by the government and after having been first duly sworn was examined and testified as follows:

Direct Examination by Mr. Inman.

Q. State your name?

A. John S. Bugas.

Q. Where do you live?

A. 415 Burns Drive, The Whittier Apartment Hotel, Detroit, Michigan.

Q. Where are you employed?

1025 A. Detroit, Michigan.

Testimony of John S. Bugas

Q. By whom?

A. The Federal Bureau of Investigation.

Q. In what capacity?

A. Special Agent in Charge.

Q. In charge of the Detroit Office?

A. Of the Detroit Office of the FBI, yes, sir.

Q. How long have you been a Special Agent?

A. Since March 1935.

Q. In May 1936 where were you assigned?

A. To the Los Angeles, California, Field Division of the FBI.

Q. And on May 11, 1936, did you have any special assignment? Were you at that time in charge of that office?

A. On that date I was Acting Agent in Charge of the Los Angeles Division.

Q. I will ask you whether or not on that day you went to 510 Cavanaugh Street, Glendale, California?

A. Yes, sir; I did.

Q. About what time did you arrive at 510 Cavanaugh Street?

A. Between 5:30 and 6:00 p. m. on that date.

Q. Who was with you on that occasion?

A. There were six other Special Agents of the
1026 FBI assigned to the Los Angeles Field Division.

Q. Can you describe those premises?

A. The address, the house at the address, 510 Cavanaugh Road, was from the street a bungalow, although in the rear it was a two-story building because the ground sloped to the rear. There was one house between it and the corner from which you arrived at 510 Cavanaugh Road. The house had five or six rooms in it. The house itself was sitting back about 25 feet from the sidewalk. It had a front door, a rather wide, oak panel front door and in that oak front door was a small door about a foot square, probably a foot high and about 18 inches wide that opened to the inside. The oak panel door also opened to the inside. It was a stucco building.

Q. When you arrived at 510 Cavanaugh Road, what did you do with the other Special Agents?

Testimony of John S. Bugas

A. I placed three of them in the rear of the house in order that they could watch the rear and the two sides from the rear; and I left two of the agents in front of the house so they could watch the front of the house and the two sides from the front, and then I and another Agent went to the front door.

Q. Who went with you to the front door?

A. Special Agent E. K. Merritt.

1027 Q. When you and Special Agent Merritt went to the front door, what did you do?

A. When we arrived at the front door, I placed Special Agent Merritt to the side of the doorway just around the corner so he could not be readily seen by anyone coming to the door in order in my mind to subdue suspicion if anyone did come to the front door.

Q. How were you dressed?

A. I was dressed in ordinary street clothes except I had attempted to simulate the appearance of a casual passer-by. I had taken off my coat and necktie and undone my collar and rolled up my sleeves as I went up to the front door.

Q. Did you knock or ring the bell, or what did you do?

A. I first tried the door quietly and it was locked. I then pressed the bell.

Q. Did anyone answer that bell?

A. After a brief pause of a few seconds or a half a minute a man came to the door and he did not open the large door but he opened the small door that I have described to you. It opened inwardly and this man appeared and looked out.

Q. Did you recognize that man?

1028 A. Yes, sir.

Q. Who was he?

A. Tom Robinson.

Q. This defendant?

A. Yes, sir.

Q. What did he say?

A. He asked me what I wanted, and I asked him if Capt. Ernie Smith lived there.

Q. Why did you choose that name?

Testimony of John S. Bugas

A. By a perusal of the city directory there had some-time recently, fairly recently as I recall, lived a Captain Smith at that address and I had that name in my mind when I went to the door.

Q. When you asked him if Capt. Smith lived there, what did he say?

A. He said "no, but maybe I can find out for you. I will look in the phone book." And he withdrew from the door.

Q. What happened then?

A. I then nodded to the Agent who was just out of sight of the door and I nodded to him indicating that it was he, and I also whispered "It is Robinson." Then this Agent got his pistol in readiness, took it out of his holster, and we watched for Robinson to return which he
1029 did in a moment or so.

Q. When he came back did he then open the big door?

A. Not at that moment. He said he could not find Smith's name in the telephone book but suggested that I might be able to find the number of his address if I would see a Miss or Mrs. Spencer from whom he had rented the house and during that conversation the Agent with me, Merritt, by that time being sure that it was Robinson, jumped in front of the large door and put his left hand through the small door and grasped Robinson's hand which was on the door and with his right hand put the pistol in Robinson's face and Robinson was instructed to open the big door immediately in the name of the law.

Q. Did he open the big door?

A. He did, immediately.

Q. Did you then take Robinson in your custody?

A. We then took Robinson in custody and brought him outside immediately—outside that door. We pulled him out on to the lawn, in other words.

Q. And on the lawn what conversation did you have with him?

A. The first thing I said to him was, "What is your name?" And to that he said—

Mr. Hogan (Interrupting): I object to that.

Testimony of John S. Bugas

1030 Mr. Brown: In view of the other ruling we had perhaps better omit the conversation. Of course I want it definitely understood that I intended to recall Mr. Bugas--

The Court (Interrupting): Do you want to make an avowal as to what the witness would say?

Mr. Brown: I think so.

At this point the following avowal was made out of the hearing of the jury:

Mr. Inman: If permitted to answer the witness would say that Robinson replied, "You know who I am," and after a moment's pause he said, "I am Tom Robinson."

The following proceedings were then had in the hearing of the jury:

Direct Examination Continued by Mr. Inman.

Q. Did you search Tom Robinson on the lawn of that home?

A. We made a quick search of him at that time. It took just a few moments.

Q. What did you find?

A. The principal thing we found at that time was a 45 automatic revolver in his pocket, fully loaded with a load in the barrel.

1031 Q. In which pocket did you find that?

A. In the right front pocket.

Q. What did you then do with Robinson?

A. We took him to the automobile where the two Agents who had stayed in the front of the house were and left him in their custody in that automobile and then this Agent and I returned to the house in order to see if anyone was in the house--anyone in addition to Robinson.

Q. Was anyone else in that house?

A. No.

Q. What did you then do with Robinson when you found no one else was in the house?

A. We went back out to the house and brought Robinson back in and the three Agents who were in the rear of the house and the two Agents who were in the car.

Q. At that time did you make a thorough search of

Testimony of John S. Bugas

Robinson?

A. At that time we made a thorough search of Robinson in the front room of this house.

Q. Did you find any money?

A. Yes.

Q. What amount of money did you find on Robinson?

A. We found on his person a sum of money totaling \$2357.64.

Q. Where was that money?

1032 A. It was in his pockets. In the pockets of his trousers.

Q. Did you make a search of the house?

A. At that time, prior to my departure from the house from the time I arrived there, we made a cursory search of the house and after we made a cursory search of the house I left, together with 2 Agents and Robinson and left the other Agents to make a thorough search of the house.

Q. During the time you were there, during the time the cursory search was made, was a strong box found?

A. Yes, sir.

Q. Describe that to the Jury?

A. A strong box was found by myself in a hallway leading back from the dining room in the rear of the house in a small cedar-lined closet in that hallway, which was 12 by 15 by about 7 or 8 inches deep. It was a dull red finish on the outside and it had a lock on it.

Q. Was it locked?

A. Yes.

Q. Did you find a key to that box?

A. Yes, sir.

Q. Where was the key?

A. The key was among the effects in Robinson's pockets, by that time having been strewn on the divan in the front room.

1033 Q. Did you open that box?

A. Yes.

Q. What did you find in it?

A. We found several packages of \$5.00-bills, all of which, as I recall, was in what appeared to be original

Testimony of John S. Bugas

bank wrappers.

Q. Was the name of the bank on those wrappers?

A. Not that I recall, no.

Q. How much money did you find in that box?

A. \$2330.00.

Q. All in \$5.00-bills?

A. Yes.

Q. Making a total of how much money found?

A. \$4687.64.

Q. What did you then do with Robinson?

A. We completed a search of the house, prior to doing anything with him, however, and found some other things in the house.

Q. What did you find?

A. I found a 12 gauge shotgun fully loaded with a shell in the barrel standing to the right of the door that we had come in. Two 45-automatic pistols in his dresser drawers of the bed room to the left of the large sitting room where we entered, and a 38 Harrington and Richardson revolver on the top of the dresser in his bed
1034 room and a quantity of ammunition fitting all of the guns with some extra clips, and cleaning apparatus, oil and rods, etc.

Q. Was the 38 revolver fully loaded?

A. Yes.

Q. Did you find any holster there?

A. We found one holster there for the 38 Harrington and Richardson.

Q. What did you then do with Robinson?

A. After the cursory search was completed I and four of the other six Agents and Robinson returned to the Los Angeles field office of the FBI in downtown Los Angeles in the two automobiles we had gone out there in.

Q. What did you do with the money you had found there? That is, did you take it with you?

A. I took it with me.

Q. In your custody?

A. In my possession; yes, sir.

Q. Then what did you do?

A. At the office, in my presence, I caused on the desk

Testimony of John S. Bugas

in front of me another count to be made of this money, the count at the house having been rather rapid and I also caused a spot check to be made on the serial numbers on the bills on the 5's, 10's and 20's with the serial numbers on the ransom list that had been circulated throughout the country. After that had been done, I chartered an airplane on the TWA airlines to go from Los Angeles to Louisville.

Q. Did you take that plane?

A. We took that plane out about 9:30 p. m. that night.

Q. Who did you have with you?

A. Robinson, Special Agent H. H. McKeey, Special Agent Leckie, Special Agent E. K. Merritt and myself.

Q. What time did you arrive in Louisville.

A. At about 11:15 a. m. the morning of May 12th.

Q. That was in 1936?

A. Yes, sir.

Q. At that time did you have with you the money you had taken from Robinson and from the strong box?

A. Yes, sir, that money had never left my possession and I took it with me to the plane and on the plane to Louisville.

Q. When you landed in Louisville, where did you go?

A. From the field, the air field, Bowman Field we went immediately to the FBI office at Louisville which at that time was in the Starks Building.

Q. Did you have the money with you?

A. I did, yes, sir.

1036 Q. On the 12th of May where was that money placed?

A. On the 12th of May after my arrival at the office it was placed in the safe of the field office in the Starks Building on the 7th floor, the money reposing in a locked brief bag to which I had the key, and which I had brought with me.

Q. On the following day did you remove that money from the safe?

A. I did, yes, sir.

Q. And to whom did you deliver it?

A. I delivered it to Special Agent Robert Laughlin

Testimony of John S. Bugas

who at that time was attached to the Louisville Field Office.

(Exhibit No. 76 which was identified in the testimony of Mr. Laughlin was handed to the Reporter and filed.)

1037 Q. I'll show you Government Exhibit 58, Mr. Bugas, a photograph, and ask you if you recognize the photograph.

A. Yes, sir, I do.

Q. Who is it?

A. It is the photograph of a woman whom I knew as—by various names, whose correct name is Jean Breese, but whom I knew as Jane Hughes, Jean Gordon, Mrs. Leslie K. Burgess and Mrs. John Phillips.

Mr. Hogan: Your Honor, he says he knows her. Did you know her personally?

The Witness: Personally?

Mr. Hogan: Yes.

The Witness: Yes, sir.

Mr. Hogan: Did you know her by those various names?

The Witness: I did. I had her—yes, sir, I did.

Mr. Hogan: Before this, I mean.

The Witness: Oh, yes.

Mr. Hogan: You knew her personally, now.

The Witness: Personally, yes, indeed, very well.

Mr. Hogan: Before this May 11th, I am speaking of, 1936.

The Witness: Not before that date. I thought you meant before today, sir.

1038 Mr. Hogan: He is testifying about the photograph of a woman that he knew by certain names. I certainly object to that.

The Court: I don't think it makes any difference when he knows the woman, if he can identify the photograph and the woman.

Mr. Hogan: He said he knew her then as those names.

The Court: I don't know when he knew her.

The Witness: I said, whom I knew by those names. I

Testimony of John S. Bugas

didn't specify as to the date, I don't believe.

Mr. Inman: You may ask the witness.

Cross-examination by Mr. Hogan.

Q. How did you know the whereabouts of Robinson, Mr. Bugas?

A. Jean Breese told me her whereabouts—told me his whereabouts, beg your pardon.

Q. How many meetings with her had you had before you went to this address where you say you found him?

A. Personal meetings or all types, sir?

Q. All types.

A. I had one telephone communication with her and one personal meeting.

Q. Did she come to your office at this personal
1039 meeting?

A. No, sir.

Q. Arranged a meeting with you elsewhere?

A. By telephone; yes, sir.

Q. And did you meet her?

A. Yes, sir.

Q. Where?

A. On the mezzanine floor of the Los Angeles Biltmore Hotel, Los Angeles, California.

Q. Up to the time you had the meeting with her, you did not know the whereabouts of Robinson, did you?

A. No, sir.

Q. Nor did any of the other agents of the F.B.I.?

A. No, sir. To my knowledge, no.

Q. This was on May 11th, 1936?

A. Yes, sir.

Q. How many agents did the F.B.I. have as of that date and prior thereto?

A. I could give you an estimate.

Q. Just estimate it.

Mr. Brown: You mean all over the United States or just in Los Angeles.

Mr. Hogan: All over the United States.

A. My guess would be about between five and six hundred.

Testimony of John S. Bugas

1040 Q. What is the number of months counted between October 10th, 1934, and May 11th, 1936?

The Court: I believe anybody can count up as well as the witness.

A. I would have to do a little rapid calculation.

The Court: A little less than two years, isn't it?

A. About eighteen months.

Q. Did this Jean Breese make any arrangement or deal with you upon the surrender or giving you information as to Robinson's whereabouts?

A. Well, that's a little difficult to answer, sir. I can tell you the details.

Q. Under what circumstances did she divulge his whereabouts?

A. Well, she phoned at about 10:00 o'clock that morning, the morning of May 11th, and asked me to meet her at 2:00 o'clock that afternoon at the designated place, which I did with another agent, and after about three quarters of an hour conversation she left the meeting without having told me where he was, but saying that if she were convinced on leaving that meeting that she were not being followed by special agents, she would phone me about 4:00 o'clock and tell me his whereabouts. Now

that's about the extent of the arrangements that we **1041** made, sir, as I recall them. I believe she did also say in line with the arrangements, that she would desire, if possible, very much that he be arrested without any harm coming to him or to the agents. She was particularly concerned about him.

Q. Did you find out from her that she had at any time known where Robinson was or had been with him?

A. Yes, sir.

Q. Did she tell you for what period of time that she might have been with him?

A. Yes, sir; she did.

Q. And what period of time did she say?

Mr. Brown: I think we are going right far afield. That's purely hearsay, has nothing to do with this case.

The Court: I think, if it is designed to test the credibility of the witness in any way, probably it can be used. Of

Testimony of John S. Bugas

course, Mr. Hogan, you understand you are waiving the hearsay rule when you are asking these questions. What the witness tells with reference to hearsay statements is made admissible by asking the questions.

Mr. Hogan: I am fully aware of that, Your Honor please. I am doing it with my eyes wide open, so to speak.

The Witness: May I answer, Your Honor?

The Court: Yes.

The Witness: Would you read the question, please?

1042 Question read by the reporter, as follows:

"And what period of time did she say?"

A. She told me that she had been with him for about fifteen months, since around January 1st, 1935.

Mr. Hogan: Your Honor please, that's as far as I care to pursue the questioning as to the time this witness admitted she had been with this defendant.

Mr. Brown: I don't understand what he means.

Mr. Hogan: I mean the person, Jean Breese.

Q. Did you have with you there an agent named Meiersen?

A. Yes, sir. Did I have him where, sir?

Q. Attached to your office.

A. Oh, yes. Yes, sir.

Q. Did he talk at the same time as you did with Jean Breese?

A. At the Biltmore Hotel?

Q. Yes.

A. Yes, sir, he was with me, the two of us.

Q. I will ask you if you do not recall, Mr. Bugas, that Jean Breese told you that Robinson, Jr., Thomas H. Robinson, Jr., had been legally adjudicated insane.

Mr. Brown: Your Honor, I am going to object to that, on this ground, in this case, at this point. I certainly was prevented from going into other matters.

1043 The Court: That's purely hearsay, isn't it, Mr. Hogan?

Mr. Hogan: It is a question whether or not certain words were said to him.

Mr. Brown: That's pure hearsay.

Testimony of John S. Bugas

The Court: It is pure hearsay. I think the Government is entitled to invoke the rule as to hearsay the same as you have. You have invoked it several times during the trial.

Q. Did you have any information or knowledge, yourself, that Robinson had been adjudicated as an insane person?

A. Now at what time, sir?

Q. Prior to the time that you went out to the house where you said he was.

A. No, I did not.

Q. You deny specifically that you had any such knowledge or information?

Mr. Brown: No, not information.

The Court: Information again would be hearsay, Mr. Hogan.

Mr. Hogan: In other words, the court rules that he cannot detail anything that he has from information?

The Court: He is not going to be allowed to testify to hearsay statements which would, as I gather, **1044** come from hearsay sources. He said he didn't know himself, didn't have any information first-hand.

Q. What deal did you make with Jean Breese to surrender Robinson?

A. Well, sir, I have outlined to you, in effect, our conversation at that time. There was, as I recall it, no deal at all made. I am positive that there wasn't.

Q. Wasn't a deal made that if she would divulge the information that he would be taken and put in an insane asylum?

A. Emphatically no.

Q. Are you sure about that?

A. Oh, positive, sir.

Q. Was the word "insane" brought up or insanity or condition of this man's mind brought up before you went to that address?

A. In our conversation with Jean Breese, now, at the Biltmore Hotel, is that what you are referring to?

Q. Yes.

A. No, sir, it was not.

Testimony of John S. Bugas

Q. Did you have any other conversation after you had placed him in charge, about his insanity?

Mr. Brown: With whom?

Mr. Hogan: With Jean Breese.

A. Did I have any other conversation with her?

1045 Q. Yes.

A. Yes, sir, I did. After he had been taken into custody, you mean?

Q. Yes.

A. Yes, sir.

Q. About his insanity.

A. I beg your pardon, no, I have not.

Q. You knew that she claimed to have been with this man for some fifteen months, I believe, you stated.

A. Yes, sir.

Q. Did you place any charge against her or place her under arrest?

A. Did I place any charge against her?

Q. Yes.

A. No, sir.

Q. Did the F.B.I.?

Mr. Brown: That certainly is not a function of the F.B.I. at all. It is a function of the United States Attorney's office.

Mr. Hogan: You maintain it was not the function of this man to arrest Robinson?

Mr. Brown: I didn't say that.

The Court: The District Attorney is saying it is not the function of the F.B.I. to file proceedings. That's what you asked, did you not?

1046 Mr. Hogan: No, I didn't.

The Court: Yes, you did, you said place charges.

Q. Did you arrest Jean Breese?

A. No, sir.

Q. But you did arrest Tom Robinson, Jr.

A. Yes, sir.

Q. Has Jean Breese ever been arrested in connection with this matter?

The Court: The witness will speak from his own knowledge.

Testimony of John S. Bugas

Mr. Hogan: That's right.

A. To my knowledge, no, sir.

Q. You did not arrest her, though you knew she claimed to have been with him for some fifteen months.

Mr. Brown: I am going to object to that again because, as I say, it is not the function of the F.B.I. to arrest anybody unless the District Attorney authorizes it.

The Court: I think counsel can agree that the F.B.I. is involved with offenses against the Federal Government and not the state government. Isn't that a fair statement?

Mr. Hogan: And I think harboring a fugitive, if she was, is an offense against the United States Government.

The Court: The witness can answer. I think he said he did not. He has answered twice, now.

1047 A. Will you read the question again, please, I don't recall what it was.

Question read by the reporter, as follows:

"Has Jean Breese ever been arrested in connection with this matter?"

A. I did not arrest her; no, sir.

Q. Did any other F.B.I. agent arrest her?

A. I can only speak from my own knowledge. To my knowledge, no.

Q. During this eighteen month period of time, the whole six hundred, or whatever number, F.B.I. agents were unable to locate Thomas H. Robinson, Jr., is that correct?

The Court: Now this witness can only speak for himself, can't he? During that time he didn't locate her.

Mr. Hogan: Yes.

A. That's correct, sir, I did not.

Q. How far was he located from your office there in Los Angeles?

A. It was about an hour's drive from Los Angeles out to where we arrested him, about twenty miles.

Q. What town or village was this residence located?

A. In Glendale, California.

Q. How many agents were assigned to the Los Angeles office?

Testimony of John S. Bugas

1048 A. I don't recall that exactly, and that would have to be a guess, if you desire that.

Q. Give us a guess on that.

A. There were about twenty agents.

Q. You and your office were looking for this man, were you not?

A. I can only answer that in this way, if you will permit me.

Q. Yes, sir.

A. Every office and every agent in the Bureau is always vigilant to locate everyone who is a fugitive or against whom process is outstanding who has not been apprehended, and inasmuch as Robinson was in that status at that time we, of course, were anxious to locate him and would run out every lead that we could develop that might enable us to take him into custody.

Q. How was Robinson dressed when you found him at this residence?

A. When he came to the door, do you mean?

Q. Yes.

A. He had on a light shirt, a white shirt, as I recall, no tie, no hat, and a pair of trousers, and shoes. The color of the trousers—

Q. That is not important.

A. I don't recall, except it was some neutral color.

1049 Q. Was he disguised in any manner?

A. No, sir.

Q. Had a moustache, didn't he?

A. Yes, he did.

Q. Wasn't dressed as a woman, was he?

A. No, sir.

Q. I believe you and these other three agents, McKee, Leckie and Merritt, came with Robinson in an airplane leaving Los Angeles about 9:00 p. m. on May 11th, is that correct?

A. Yes, sir.

Q. You arrived in Louisville what time?

A. At about 11:15 a. m. on May 12th.

Q. And then you took him from Bowman Field, air-

Testimony of John S. Bugas

port here in Louisville, Kentucky, or just outside the city, to the seventh floor office of the F.B.I., located in the Starks Building of this city.

A. Yes, sir.

Q. And you were with him most of that time, or all of that time?

A. Yes, sir. You mean, now, up to the time that we took him to the office?

Q. Yes.

A. Yes, sir.

Q. And after you took him to the office, did you
1050 stay with him?

A. Fairly continuously the remainder of that day, up until about 9:00 or 10:00 o'clock that night.

Q. Was he brought to this court and arraigned on May 12th?

A. No, sir.

Q. He was kept confined in the F.B.I. office in the Starks Building, was he not?

A. He was kept in the F.B.I. office that day up until the time I left, which was around 9:00 or 10:00 o'clock, yes, sir.

Q. Was he arraigned on the morning of May 13th, 1936, which would have been the second morning?

The Court: This witness wasn't here, was he?

The Witness: On the 13th?

The Court: Yes.

The Witness: Yes, sir.

The Court: I thought you said you left.

The Witness: No, I left the office, Your Honor.

A. The question again, please?

Question read by the reporter, as follows:

"Was he arraigned on the morning of May 13th, 1936, which would have been the second morning?"

A. To my knowledge, no, sir.

Q. He was not arraigned until sometime around
1051 6:00 p. m. of May 13th, 1936, was he?

A. I saw him arraigned at about that time on

Testimony of John S. Bugas

the 13th, yes, sir.

Q. He was brought here in this very court room in shackles, was he not?

A. I don't recall whether it was this court room or the other one, sir.

Q. Whichever one it was, he was shackled, in chains?

A. As I recall, he was handcuffed. I do not recall the shackles.

Q. During the time that he was in the Starks Building of the F.B.I., was it brought to your attention or to the other agents, that this man had previously been insane?

Mr. Brown: I certainly don't mind brought to his attention. I don't know that it would help him. It is not a question of his attention. It is the question of what knowledge he has.

The Court: That would be hearsay again, wouldn't it, Mr. Hogan?

Mr. Hogan: In the form of it, unless he knew that they had examined the records.

The Court: This witness can only get his information from someone else, and, of course, that is not the best evidence. We have stuck to the hearsay rule all the way through. You have invoked it.

1052 Mr. Hogan: I believe that's all.

Mr. Brown: That's all.

Mr. Hogan: That's all, Mr. Bugas.

The Court: Is that all, Mr. Brown?

Mr. Brown: Your Honor, I might state at this time, I think that's the Government case, but I understand from Your Honor that you are not going to hold court this afternoon, so I would appreciate it if you would allow me formally to indicate my intention to close Monday morning. We have gone here a week and I want to review in my own mind the evidence.

The Court: Let me see counsel here a minute.

Mr. Hogan: Before we do that, if Your Honor please, there is an objection I want to make, and that is to the testimony of Mr. Laughlin, and I understood that his testimony was contingent upon being connected up by Mr. Bugas. The basis of my objection as to Mr. Laughlin is that

Proceedings

he did not testify that those entries that he made upon some sheets were made in the usual and regular course of business.

The Court: He testified they were made by himself, didn't he?

Mr. Hogan: Yes, but not as an F.B.I. agent or any other officer of the Government.

The Court: Objection overruled.

Mr. Hogan: Exception.

1053 The Court: Members of the jury, we will go on the assumption for the time-being, at least, that that will complete the Government's case. Upon review of what the Government has put in, the Government may have a witness or two, but probably not. Accordingly, the next step in the case in the way of evidence would be to go ahead with the defendant's evidence, which we will delay until Monday morning. That means, we will not have any afternoon session this afternoon. Counsel on both sides can take the recess for an opportunity of reviewing their records and doing necessary work that they might do between now and Monday.

I want to caution all of you, however, over this Saturday afternoon and Sunday recess, not to discuss this matter among yourselves or with anyone, or permit anyone to talk to you about it in any way or in your presence. The case is, of course, not completed. You have only heard one side so far. You are not to make up your mind or make up any decision or discuss the aspects of the case at all with each other until all the evidence is in on both sides, and you have heard the arguments and the court's instructions. Accordingly, you shall not discuss it nor form any opinion at the present time, of the case. Keep an open mind on it until the evidence is all concluded, and, of course, until we start again on Monday morning.

1054 Probably some of you, maybe all of you, I hope, would like to go to church tomorrow. If so, the marshal and the bailiff will be prepared to take you in groups at different times to the different churches. I do not think it will be possible for you all to go to separate churches, but maybe you all can break the groups up into

Proceedings

numbers where you can agree to go in small groups at different times, so that all of you can have your opportunity to spend Sunday as you usually do.

Any further suggestions of counsel for either side?

Mr. Brown: Nothing, Your Honor.

Mr. Hogan: Nothing from us.

The Court: Remember the admonition of the court with respect to talking or discussing the case.

Mr. Marshal, will you adjourn court?

An adjournment was taken to Monday, December 6, 1943, at 9:30 o'clock a. m.

1055 Convened Monday morning at 9:30 a. m., December 6, 1943, pursuant to adjournment and continued with the following proceedings:

Mr. Hogan: If Your Honor please—

The Court: Just a moment. I think we have a statement from the Government first.

Mr. Brown: The Government rests.

The Court: The Government rests, all right.

Mr. Hogan: If Your Honor please, at this time I have a motion on behalf of the defendant to exclude a number of exhibits mentioned in the motion—there are a number of them, so I will not take time to designate them by numbers—and it is based upon this statement or upon this cause of objection. The Government put witness Knowles on the stand out of order, that is to say, they put him on for the purpose of identifying certain finger-prints and qualified him as a finger-print expert. They proposed and promised the Court that they would connect his testimony up with the testimony of witness Richard E. Smith who was delayed reaching the Court by reason of train facilities.

Witness Knowle or Knowles took the exhibits that had been offered in evidence, consisting among other things, the ransom note, letters, letter to Mr. Berry Stoll, letter to Miss McHenry, letter to the Custodian, envelope to the Custodian, envelope in connection with those other

1056 letters, and he also connected up finger-prints or identified finger-prints upon the telephone box, I believe; in other words all the finger-prints that were submitted to him, he made a comparison with the known or

Proceedings

genuine specimen of the finger-prints of Thomas H. Robinson, Jr., and upon the witness stand, when he was asked if he prepared those, he said he did, he was asked whose finger-prints they were and he said "Thomas H. Robinson," not "Junior," not "Senior," but simply "Thomas H. Robinson." Mr. Brown at one time in the questioning asked him, "Could those finger-prints have been made by any other person?" or question to that effect, and he said "No," of his testimony was that they could not have been made by any other person than Thomas H. Robinson—not Thomas H. Robinson, Sr., not Thomas H. Robinson, Jr., merely and simply Thomas H. Robinson.

That is significant in this case because the indictment in this case, which was drawn in 1934, accused Thomas H. Robinson, Sr. and Thomas H. Robinson, Jr., father and son, of the commission of the crime set out in this indictment. In other words, the father and the son were both accused in the same indictment.

Now the father was tried in this court, and, of course, he was acquitted upon those charges. That left the defendant, Thomas H. Robinson, Jr., charged in the indictment, and they have not connected up the finger-
1057 prints of this defendant with any letter or telephone box, or anything that has been testified or identified by the witness Knowles, and I think that that is important in view of the fact that both father and son were named in the same indictment.

The Court: Let the motion be filed. That's the motion that we have just discussed for the last thirty or forty minutes in chambers and on which your argument has been more at length than it was right now when you have stated your reason in detail. In view of the evidence shown that the known finger-prints which were made by the witness Smith were the finger-prints of the defendant, Thomas H. Robinson, Jr., he said that it was shown to be of Robinson, Jr., the witness Knowles was comparing the finger-prints as presented to him with the finger-prints of Robinson, Jr., and his testimony I think fairly and reasonably to have been with reference to the known finger-prints of Robinson, Jr., and the statements are accordingly

Proceedings

taken in that light. He had no other finger-prints that he was making comparisons with.

However, as I indicated to you, I don't think that the motion is properly made at the right time, rather, it might be made now, but there is no necessity for it to be passed on until the close of all the evidence, and if a connection is made the motion may be academic at the close of all the evidence. Its only purpose at this time would be to

1058 remove that evidence from the record for the purpose of considering any motion by the defendant to dismiss at this time, which I understand will probably be made, and even if such evidence be considered as not before the Court in considering your motion to dismiss, which I understand is to be made, as I have heretofore indicated in chambers it doesn't affect the picture in any material extent. Accordingly, your ruling to strike the evidence as indicated in that motion will not be passed on at the present time. The ruling is reserved until all the evidence is given.

Any further motions?

Mr. Hogan: Your Honor please, at this time, then, I ask the Court and move the Court for an order of a directed verdict or an order of dismissal of this defendant and of this indictment and the charges against him. If you want me to briefly outline my reasons, I will do so.

The Court: Probably for the purposes of the record you should do so. You have done so somewhat at length in chambers.

Mr. Brown: I think it should be done either in chambers or outside the presence of the jury.

The Court: Yes, I believe you are right in that respect. I believe we can handle that later, in which you can put your motions to the stenographer, the reasons for your motions, a little later when the jury is excused.

1059 You have already outlined them to me in detail and

I understand they will be the same, and, therefore, there is nothing to be presented to me by your statement at the present time that I have not already had presented. With the understanding then, that you will complete the

Testimony of Thomas H. Robinson, Jr.

record later by giving the reasons that you gave to me in chambers, let the motion be overruled. Exception to the defendant.

THOMAS H. ROBINSON, JR. called in his own behalf, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Hogan.

The Court: Before this defendant testifies, Mr. Hogan, do you wish to make any opening statement to the jury?

Mr. Hogan: If Your Honor please, in the interest of time, I believe I will forego that formality and let the case proceed without the requirement or without my making any opening statement.

The Court: Has this defendant been advised of his rights?

Mr. Hogan: He has been, and I will have him state in open court if he is willing to have that right waived.

The Witness: Yes, I am, Your Honor.

1060 Q. What is your name?

A. Thomas Henry Robinson, Jr.

Q. How old are you, Tom?

A. Thirty-six.

Q. Where were you born?

A. Nashville, Tennessee.

Q. When were you born?

A. May 5th, 1907.

Q. Where were you raised as a boy and young man?

A. In Nashville, Tennessee.

Q. Who was your father?

A. Thomas Henry Robinson, Sr.

Q. Who was your mother? Who is your mother?

A. Mrs. Jessie P. Robinson.

Mr. Hogan: If Your Honor please, I would like at this time—I don't know whether there are any witnesses in the court room who have been subpoenaed, who may be called in rebuttal, I would like to find that out.

The Court: If there are any witnesses in the court

Testimony of Thomas H. Robinson, Jr.

room for either the Government or the defendant, please retire to the hall and remain until you are called. Mr. Marshal, see that no witnesses get in the court room. Is the Marshal at the door?

The Marshal: Yes.

Q. What education have you had, Tom?

1061 A. Grade school and preparatory school, three years at college.

Q. Now, what grade school did you attend?

A. The Ross School, in Nashville.

Q. Did you complete that educational training?

A. I think I did, yes.

Q. What was your next scholastic training?

A. Wallace Preparatory School.

Q. How many years did you attend Wallace Preparatory School?

A. Three years. However, I had made up one year in the summer and I think I finished that training.

Q. Did you complete your course of education at Wallace Preparatory School?

A. I think that I lacked one subject of completing that.

Q. You did not graduate from that school, then.

A. No, I didn't receive a diploma from Wallace.

Q. And where is Wallace Preparatory School located?

A. That's in Nashville, Tennessee.

Q. What other school did you attend or schools after leaving Wallace Preparatory School?

A. Vanderbilt University.

Q. How long did you attend Vanderbilt?

A. For a period of about two and a half years.

1062 Q. And where is Vanderbilt located?

A. That's in Nashville, Tennessee.

Q. What type of studies or course of studies did you pursue at Vanderbilt University?

A. I studied law.

Q. Did you complete the law course?

A. No. I lacked about two or three subjects of completing it.

Q. Did you have any childrea's disease?

Testimony of Thomas H. Robinson, Jr.

A. Oh, the normal run of children's disease, I think I had most of them, yes.

Q. Will you, for the purpose of the record and for the purpose of the jury, tell what those were?

A. Well, measles, mumps, chicken-pox, later on I had malaria.

Q. Now, in reference to the malaria, did you have that in a mild or an aggravated form?

A. Very aggravated form, I would say.

Q. Will you please elaborate on that a little bit?

A. Well, it necessitated quite a bit of medical treatment, I know I had high fever, took shots of quinine, intermuscularly, and it left me in a very weakened condition when it was over, in fact I came very near dying I think at the time.

Q. At what age were you when you had this
1063 malarial trouble?

A. I would say about fourteen.

Q. Were you then living in your home city of Nashville, Tennessee?

A. Yes, I was.

Q. Following that malarial trouble, may I ask you this—how long were you troubled and were you treated for this malarial disease?

A. I would say over a period of a month or two.

Q. Were you required to miss any school by reason of that trouble?

A. Yes, I did. I miss schooling for that year.

Q. What was that answer?

A. I said, I missed my schooling for that year.

Q. Did the malaria leave you in a weakened condition physically?

A. Yes. I think it eventually led to development of tuberculosis.

Q. Now, what other trouble, if any, did you have following your malarial disease?

A. I developed tuberculosis.

Q. Before you had the tuberculosis, did you have any other trouble, lung trouble?

A. I had pneumonia, developed pneumonia and pleu-

Testimony of Thomas H. Robinson, Jr.

risily before I developed the tuberculosis.

1064 Q. What was your age when you developed the pneumonia and pleurisy?

A. I would say between the ages of fourteen and fifteen.

Q. How long were you troubled with pneumonia and pleurisy?

A. At least a period of a month.

Q. Were you seriously ill or just mildly ill with the pneumonia and pleurisy?

A. I was very seriously ill with it.

Q. Did you require the attendance of physicians?

A. I did.

Q. Over that period?

A. Yes.

Q. Did those conditions leave your physical health impaired in any way?

A. Very much. It was at that time that I developed the tuberculosis in both lungs.

Q. Did you receive any treatment for your tuberculosis?

A. Yes. I was admitted to the Davidson County Tuberculosis Sanitarium for a period of about a year.

Q. Is that in the State of Tennessee?

A. Yes, in Tennessee.

Q. Received treatment during that period, I take it.

1065 A. Yes, I did.

Q. Was your tuberculosis an aggravated or a mild case?

A. I think it was more or less mild. I had spots on both of my lungs, but never really severe.

Q. Did you have any other injury or lick upon your head during your childhood? I mean, not any other, but did you have any injury or lick on your head during childhood?

Mr. Brown: I am going to object on that. I think we have very serious objections on the point of leading questions.

Q. Did you sustain any injuries during your child-

Testimony of Thomas H. Robinson, Jr.

hood?

A. Yes. When I was approximately eleven years old and I was on my Uncle's farm in Ohio, I was kicked by a horse very severely, the right cheek.

Q. When you say severely, will you please elaborate on that?

A. Well, I was knocked unconscious, my left eye—right eye was closed for a period of two weeks. My cheek bone was swollen for a long time thereafter, probably still is.

Q. Did that kick by that animal leave any scar on your face?

A. No, I don't recall that it left any scar at the present time. It probably did at that time.

Q. Did it impair in any way the bony structure of your face or head?

A. It did, with my antrum, which is the upper part of the cheek bone, as I understand it.

Q. After you spent this time in the tuberculosis sanitarium of Davidson County, what next did you do?

A. Why, I again resumed my studies in high school at that time.

Q. During the time that you were in this tuberculosis sanitarium, did you miss school?

A. Yes, I did. However, during that period I think I managed to make up what was the equivalent of one year, first year of high school.

Q. After you got out of the tuberculosis place and you resumed your studies, at what school or schools?

A. That was the Wallace Preparatory School.

Q. And you did not, as you said a moment ago, graduate from the Wallace Preparatory School?

A. No; I think I lacked one subject of completing that.

Q. What did you do following the termination of your schooling at Wallace Preparatory School?

A. I entered Vanderbilt University, and started to enter the academic school, and didn't have sufficient credits and I was able to enter the law school as a special student.

Q. Well were you not able to enter as a regular student because of your not completing the Wallace Preparatory

Testimony of Thomas H. Robinson, Jr.

School?

A. That's correct.

Q. Well now tell the jury about your studies during the time you spent at Vanderbilt in pursuance of your scholastic course?

A. Well I think I possibly completed about a year and a half of my studies in law school, and at that time I was forced into a marriage against my will, and—

Q. (Interrupting) Now wait just a minute before you come to that. Prior to that forced marriage you have just mentioned, did you associate yourself with other young folks of Vanderbilt and around the town of Nashville, Tenn.?

A. Yes, I did. I belonged to two fraternities
1068 at that time. A social fraternity and a legal fraternity; and I went with the usual crowd of boys and girls who were in my school and known to me in my town, Nashville.

Q. Did you travel in what is known as good society or—

A. (Interrupting) I would say very good, yes.

Q. Did you attend dances?

A. Quite frequently.

Q. Were you acquainted with any nationally known vaudeville or radio performer, or who later became such?

A. Yes I was.

Q. Will you tell this jury who he was?

A. James Melton. He was a very close friend of mine.

Q. Who is James Melton?

A. He is quite a prominent singer on the radio and in the movies.

Q. Well were you closely associated with James Melton, or did you just casually know him?

A. Very closely associated with him. He and I dated sisters together. He went with the older sister and I went with the younger sister.

Q. Now had you been pursuing a fairly normal course of life considering your diseases you have mentioned up to the point of this forced marriage?

1069 Mr. Brown: I object to that. Characterized by

Testimony of Thomas H. Robinson, Jr.

the normal course of life, that calls purely for a conclusion by this defendant. I think he can tell what he did and let the jury come to their own conclusion.

The Court: I believe he has told what he has done. If there is anything further that you want to bring out different from the normal, I think you can do that.

Mr. Hogan: All right, Your Honor. I think Your Honor is probably correct on that—is correct.

Q. How did you get along with your fellow students in Vanderbilt University and the Wallace Preparatory School?

A. I got along very well with all of them. I had a host of friends, and I was well liked by them all, I think.

Q. Did you make good grades or inferior grades in your studies up to the point of your forced marriage?

A. I made very good grades.

Q. Did you live in Nashville at the time you were going to Vanderbilt?

A. Yes.

Q. Did you live at these fraternity houses, or did you live at your own home?

A. I lived at home during that time.

Q. In other words, did you or not live at any
1070 fraternity house?

A. I stayed there quite a bit during the day, but I didn't live there at night, no.

Q. Did you participate actively in the social and other functions of your fraternity?

A. Yes; I did.

Q. Did you participate actively in the school functions?

A. Yes; I think I took a very active part in all the school activities at that time.

Q. Now, you have already mentioned this forced marriage. How old were you when you were forced into what you say was a forced marriage?

A. I would say I was 20 years old.

Q. Well suppose you tell the jury about that forced marriage?

A. Well at that time I was served with a warrant

Testimony of Thomas H. Robinson, Jr.

charging me with a violation of the age of consent with a girl I had previously been going with and I was threatened with prosecution on that warrant; and I thought it best at the time to marry the girl, which I did.

Q. Now, you say you thought it best. Did you have any other alternative?

A. None other than to face prosecution in violation of the age of consent.

1071 Q. Tell the circumstances of your being presented with this warrant? Who brought the warrant there?

A. Two deputies and the girl and her Uncle and mother, I think, came to my fraternity house in the afternoon and served a warrant on me and the deputies insisted that I marry the girl.

Q. Well, were you given an opportunity to consider the marriage?

A. No I was not. I was not given any opportunity to consult with my father or friends or anyone else. There was no alternative left but to marry her.

Q. Had you known this girl for long?

A. I had known her for a period of less than seven months previous to that.

Q. Well, was she a girl of your social standing?

A. No, I wouldn't say she was. I picked her up as a casual pick-up.

Q. But you did marry the girl?

A. I did marry her.

Q. What happened after your marriage? Did you live with her?

A. No. She went to her home and I went to my home, and she began making demands on my father and mother for a considerable sum of money. I think probably \$5,000 was what she—she wanted to annul the marriage
1072 and my father wouldn't go for that, so he filed suit in my behalf, at least I did thru him, in the Chancery Court for annulment.

Q. Were you of age then?

A. I don't know whether I was 20 or 21 at that time. I rather think I was not quite 21.

Testimony of Thomas H. Robinson, Jr.

Q. You said you filed suit thru your father. I take it that you were not 21?

A. No; I was not.

Q. What was the outcome or result of that annulment or court action?

Mr. Brown: Well I am going to object to that. The records speak for themselves.

Mr. Hogan: Well he can tell.

Mr. Brown: No he can not.

Mr. Hogan: Well he knows what happened.

The Court: I think the records are the best evidence, Mr. Hogan.

Q. Well were you divorced from this girl?

A. Yes, I was. I might add that three or four days after our marriage she gave birth to a child—a 9-pound 9-months child—

Mr. Brown (Interrupting): Your Honor, I am going to object to that. Obviously this defendant is no doctor.

The Court: Well I suppose the father is usually
1073 acquainted with a child that is born.

Mr. Brown: I will agree with you, assuming he is the father, I will agree with you.

Mr. Hogan: He is charged with being. He certainly ought to know whether it is a nine or seven months child.

The Court: Well, objection overruled.

Q. You may continue about the child?

A. As I said before, the child was a nine months child; weighed 9 pounds, and I had only known the girl 7 months prior to that time by her own admitted statement.

Q. Did she ever make any admission to you as to the real father of that child?

Mr. Brown: Well now I am going to object to that.

The Court: It is purely hearsay, Mr. Hogan.

Q. After this incident and marriage and annulment, did you continue at Vanderbilt?

A. Yes, I think I continued my studies for a period of six months probably after that time.

Q. What effect did that have upon you as regards your social standing with your fellow students and in the community?

Testimony of Thomas H. Robinson, Jr.

A. Well I think that had the effect of socially ostracizing me from the friends that I had formerly been going with.

1074 Q. Well, did it do that?

A. It was considered quite a scandal at the time, and naturally the young girls that I had been going with before I couldn't go with then, and I don't think they would have wanted me to. And, while my boy friends didn't pay so much attention to it, the girls did.

Q. Did that have any effect upon your mental state?

A. Quite a bit. The embarrassment and the scandal disturbed me quite a bit.

Q. Well how did it affect your mental condition?

A. It is hard to explain just what would do to one. At that time I had had fairly good plans for a legal career or a business career. And in the town that I lived in, that was no longer possible under those circumstances. A career in the town that I lived in more or less depended upon social contacts, and as my social contacts were cut off, why at the same time it cut off my chances of a career in that town.

Q. Well did this have any effect upon you while you continued your studies at Vanderbilt?

A. Yes, it did. It was embarrassing to be in the law school where those facts were commonly known. I think at that time there was a young girl in my domestic relations class regarding marriage and divorce and she

1075 was studying law, and the professor would quite frequently kid me about my marriage and divorce. In fact, he made it a point whenever that subject came up to refer to me in the presence of this girl, and it was very embarrassing to say the least.

Q. What effect did that embarrassment have upon your mental state?

A. Well, I naturally brooded over that quite a bit.

Q. Well did it have any effect in bringing about a change in your plans and personality?

A. Yes, I think—I am sure it did. Just before that I had been pretty gay and feeling good and pleasant to everybody; but after that happened I rather withdrew unto

Testimony of Thomas H. Robinson, Jr.

myself, and stayed by myself a whole lot. I severed most of my social contacts, began dropping my studies in school, and eventually did quit the law school soon thereafter.

Q. Was that the reason you quit the law school?

A. I think it was.

Q. What did you do after you quit the law school?

A. I took up employment with the Wayne Lumber Company in Nashville, Tennessee.

Q. What were your duties with the Wayne Lumber Company?

A. I was cost accountant and timekeeper.

Q. How long did you work for the Wayne Lumber Company?

A. I think I worked for them for a period of about five months—it may have been four or five months.

Q. Were your services satisfactory with that company?

A. No; I think I was discharged from the Wayne Lumber Company after a period of 4 or 5 months.

Q. For what reason were you discharged?

A. Well I would say just general neglect of duty and I was drinking quite a bit at that time and did not give attention to my work.

Q. Had you been a heavy drinker before you left the law school?

A. No I had not. I was never a heavy drinker during that period but after that I did.

Q. Well did this forced marriage drive you to drink?

Mr. Brown: Now I am going to object to that.

The Court: Well he can tell what happened in sequence of time, if he wishes to.

Mr. Hogan: All right.

Q. Suppose you say, with reference to sequence of time, whether you were a drinker before this forced marriage?

A. Why no, I wasn't—only moderately. I drank moderately before that and after that occurred I began to drink rather heavily—too heavily.

Q. Now, let's go back a little bit and find out about your religious connections. Did you attend any church

Testimony of Thomas H. Robinson, Jr.

up to the time that you had this forced marriage?

A. Yes, I attended church regularly up to that time.

Q. Just tell the jury with what denomination you were associated or affiliated?

A. The Presbyterian Church.

Q. Did you actively attend the services of that church?

A. Yes I did. My father was a deacon in that church and he taught the young men's Bible class at that time which I attended also, and I attended regularly every Sunday at that time.

Q. What business was your father in at that time?

A. He was an engineer—a construction engineer and manager of the Nashville Bridge Company.

Q. Did he have a fairly responsible position?

A. Yes, I would say he was one of the leaders of the company at the time.

Q. In the engineering field, how did he stand?

A. He was rated as one of the best bridge en-
1078 gineers in the South.

Q. Did you connect up yourself with any church functions or societies?

A. Yes, I was a member of what they called the Young People's Christian Endeavor and Young Men's Bible Class at the church.

Q. Well, in connection with those societies or functions, did you attend any picnics or parties that the church gave from time to time?

A. All church festivals and picnics and plays and things like that.

Q. Were you ever a boy scout?

A. Yes. I was a member of the boy scouts at the age of 12 years I think.

Q. Did you actively participate in that group?

A. Yes, up until the time that I developed this tuberculosis I did. My father was a Scout Master at the church.

Q. Were you interested, deeply interested or just mildly so, in scout work?

A. I would say I was very deeply interested in it. I lacked only a few merit badges of being what is known as an Eagle Scout, which is about the highest rank the scouts

Testimony of Thomas H. Robinson, Jr.

have.

1079 Q. Well had your father up to that time been temperate, or had he been otherwise?

A. I think he was very temperate up to that time.

The Court: What time do you have reference to?

Mr. Hogan: Up until the time he joined the boy scouts.

Q. Well did your father ever get intemperate?

A. I think, after I contracted tuberculosis, around that age, that he began drinking quite heavily.

Q. Did you ever endeavor to straighten him out?

A. To the best of my ability at that time I did.

Q. And had he been going to church during those intemperate times, or had he dropped out?

A. Well he began to drop out of the church at that time.

Q. Did you ever influence him to get back in?

A. Yes I did. At one time he gave up drink for a period of a year and came back into the church and resumed the same duties that he had had before.

Q. Do you claim credit for that?

A. I think I do.

Q. Did you belong to any fraternal organizations other than connected with the school, like the Masons or the Elks?

A. Yes, I was a member of the De Moley—that
1080 is a junior order of the Masons, you might say.

Q. Now, you have already testified that you had employment with the Wayne Lumber Company. After you left there, what did you do?

A. I think about that time I married for the second time.

Q. And do you recall the year of your second marriage?

A. It was the early part of 1929—January, I believe. January 9th, 1929.

Q. By that second marriage did you have any child or children?

A. Yes, sir.

Q. And what is that child's name?

A. James Presley Robinson.

Testimony of Thomas H. Robinson, Jr.

Q. And is he living today?

A. Yes, he is.

Q. How old is he?

A. 14 years old.

Q. Did you have regular employment after you left the Wayne Lumber Company?

A. No I didn't. I had no employment from the time I left the Wayne Lumber Company until I was adjudicated insane.

Q. Well, were you adjudicated insane?

1081 Mr. Brown: I am going to object to that. The records speak for themselves.

Mr. Hogan: We will connect it up, if Your Honor please.

The Court: Have you the record?

Mr. Hogan: Yes, Your Honor.

The Court: All right.

Q. I will ask you if the Circuit Court of Davidson County, Tennessee, ever had occasion to or did make any inquiry into your sanity?

A. Yes in the spring, or early summer, of 1929; in May I think it was. No, I beg your pardon, it was June of 1929.

Q. Were you ever put under observation at any time prior to your being adjudicated an insane person?

A. Yes I was sent to the Central State Hospital for the Insane at Nashville for a period of two weeks observation by the Circuit Court of Davidson County.

Q. Is that in the State of Tennessee?

A. Yes it is.

Q. Is the Central State Hospital in Davidson County a public institution created and maintained by the laws of the State of Tennessee?

A. Yes; it is.

Q. During this two weeks period of observation
1082 were you observed by men of the medical profession?

A. Yes, they had a staff there of four doctors—at least four doctors, possibly five.

Q. And how often would they observe you during that two weeks period?

Testimony of Thomas H. Robinson, Jr.

A. They submitted me to a lot of tests at that time, physical examinations and mental examinations during the period of that two weeks.

Q. Do you know whether or not those medical men made any report to the Circuit Court of Davidson County?

A. Yes, at the end of that two weeks period they brought me back into the Circuit Court with a report from the staff doctors.

Q. After you were brought back into the Circuit Court of Davidson County, was any jury impaneled to hear testimony and to determine your sanity or insanity?

A. Yes, a jury was impaneled on the day that I was brought back into court.

Q. And what was the verdict of that jury?

A. The jury found me insane but I do not recall the exact terms of the verdict at this time.

Q. And did—

Mr. Brown: Now I am going to object to that. I don't want to interpose useless objections—

1083 The Court (Interrupting): If you have the record suppose we put it in now.

Mr. Brown: Yes, because I don't understand that there is any Circuit Court in Jefferson County.

The Court: Let Mr. Brown see your records.

Mr. Hogan: All right (handing papers to Mr. Brown.)

Q. Now I show you what appears to be an authentic copy of the record or judgment of the Circuit Court of Davidson County, Tennessee, in a proceeding held June 27, 1929 to determine—

Mr. Brown: If you are going to refer to it, just read it the way it is. I don't want you to refer to excerpts that does not apply to the whole thing.

Q. I will ask you to file that together with the duly authenticated report of the medical doctors—

Mr. Brown (Interrupting): I am going to object to that. I have no objection to the adjudication—

The Court (Interrupting): The judgment is what we are interested in.

Mr. Hogan: Yes, and I am prepared to show at this time that the result of the medical examiner is competent

Testimony of Thomas H. Robinson, Jr.

evidence on the question into the inquiry into sanity.

The Court: Are those medical examiners alive
1084 at the present time?

Mr. Brown: Yes, Your Honor.

Mr. Hogan: Some of them are. One of them isn't.

The Court: I mean, so far as this case is concerned, isn't the evidence we are interested in from the witnesses themselves what they state from the witness stand, and not what they have said at some other time.

Mr. Hogan: If Your Honor please, under the Act of Congress of the due Faith and Credit Laws—

The Court: That is public records—

Mr. Hogan (Interrupting): Yes, sir, records of public institutions.

The Court: Well I am glad to hear you on it. Have you any authorities?

Mr. Hogan: I have authorities, but what I am offering now is not bearing upon the records of public institutions but it is a part of the court record itself.

The Court: Well it is almost time for a recess. We will take it at this time and I will hear you in chambers.

Members of the Jury, do not discuss this matter among yourselves or with anyone or permit anyone to talk about it in your presence.

We will have a short recess.

1085 After a short recess, the hearing was resumed,
as follows:

The Court: The ruling on the admissibility of the tendered documents will be postponed until after the noon recess when counsel have had time to further consider the question and advise the court. I think we can proceed, however, with other testimony in the mean time.

(Mr. Hogan continuing:)

Q. Were you or not adjudicated an insane person by the Circuit Court of Davidson County, Tennessee?

A. Yes, I was.

Q. Following that adjudication, were you committed to any institution for the insane of the State of Tennessee?

A. I was re-committed to the Central State Hospital

Testimony of Thomas H. Robinson, Jr.

at Nashville.

Q. Is that the public institution of the State of Tennessee that you have referred to?

A. That's a state institution.

Q. Did you spend any time in that institution?

A. I stayed there for approximately one year.

Q. Confined all the time to that institution?

A. Yes, I was, inside.

Q. During your confinement or stay there, did any medical examiners or medical staff of that insane institution make examinations of you?

1086 A. Yes, I would say on the average of once a week during that time.

Q. Did they record their findings and observations?

A. Well, I don't know that personally, but I rather think they did.

Q. Now, were you ever—was your sanity or insanity ever later inquired into by any other court or tribunal?

A. Yes, I was removed from Central State Hospital and taken into the County Court of Davidson County.

Q. What state?

A. Tennessee.

Q. For what purpose?

A. For the purpose of a lunacy hearing, and a jury was again impaneled in that case—

The Court: Let's find the date of that first.

Q. What is the date of that hearing?

A. I believe it was in May of 1930.

Q. To refresh your recollection, was it not May 7th, 1930.

A. I am sure that it was; yes.

Q. Was evidence presented before this jury concerning your sanity or insanity?

A. Yes. There was testimony and evidence introduced from several doctors at that time.

Q. Did the jury return a verdict after hearing
1087 the evidence and after being instructed by the court on the law of the question?

A. They did. They found that I was of unsound mind at that time.

Testimony of Thomas H. Robinson, Jr.

Q. I show you what purports to be and what is an authenticated copy of the judgment of the County Court of Davidson County, Tennessee, referring to the proceeding and inquiry and judgment about which you have just testified, and ask you to file that as a part of your testimony.

The Court: What about the exhibit you were talking about previously? Are you going to tender that?

Q. I hand you an exhibit which purports to be and is a duly authenticated copy of the judgment of the Davidson Circuit Court of Tennessee relating to inquest or judgment rendered in that court on June 27th, 1929, and ask you to file that as your Exhibit No. 14. Will you do that sir?

A. I will.

(The document referred to was handed to the reporter and filed with the record as Defendant's Exhibit No. 14.)

Q. I hand you Defendant's Exhibit No. 15, being an authenticated copy of the judgment of the Davidson County Court of May 7th, 1930, and ask you to file that as Defendant's Exhibit No. 15. Will you do that?

A. I will.

1088 (The document referred to was handed to the reporter and filed with the record as Defendant's Exhibit No. 15.)

Q. Now, following that judgment of the Davidson County Court, were you committed to any insane institution or state institution of the State of Tennessee?

A. I was committed to the Western State Hospital for the Insane at Bolivar, Tennessee.

Q. Is that an institution maintained by the State of Tennessee?

A. Yes, it is.

Q. What period of time did you stay in that institution?

A. I think I was there for a period of exactly three months.

Mr. Hogan: If Your Honor please, I would like to read to the jury these judgments—Defendant's Exhibit No. 14.

Proceedings

“Thursday, June the 27th, 1929.

Court met pursuant to adjournment. Present and presiding The Honorable Chester K. Hart, Regular Judge of the Criminal Court of Davidson County, Division 1, when the following proceedings were had, to wit:

State of Tennessee v. Thomas H. Robinson, Jr.

At a court held June 27, 1929, came the Attorney General, who prosecutes for the State, and the defendant in custody. Thereupon, upon a plea of present insanity, urged by the defendant's counsel, the defendant put himself upon the country and the Attorney General doth the like.

Whereupon, to well and truly assess the defendant's punishment, there came a jury of good and lawful men of Davidson County, to wit: J. H. Pugh, S. C. Battle, G. Zolert, C. W. Wilkerson, L. G. Robertson, D. C. Boston, H. E. Peach, J. M. Garford, J. W. Spain, J. A. Capps, J. M. Peebles, R. L. Turner, who were duly elected, tried and sworn to well and truly try the issues joined and true verdict render, according to the law and evidence aforesaid, upon their oath, do say: That they find the defendant at insane and too dangerous to society to be set at large.”

And the caption of that case is State of Tennessee v. Thomas H. Robinson, Jr.

(Mr. Hogan, continuing reading:)

“Thereupon there the jury was discharged. It is therefore considered by the Court that the defendant be committed to the keeper of the Central State Hospital for the Insane, for the Middle District of Tennessee, in whose custody he shall remain as other patients as long as he is mentally insane, but should his mental condition become normal at any time in the further, the said Superintendent will return said defendant to the Sheriff or Jailer of Davidson County, Tennessee.

Proceedings

It is therefore ordered by the Court that a copy of this order be furnished the Sheriff of Davidson County, Tennessee, and that said Sheriff will deliver the said copy of said order and the body of the defendant to the Superintendent of the Central State Hospital for the Insane for the Middle District of Tennessee, to be kept in accordance with this order.

(Signed) Chester K. Hart, Judge."

Do you think I should read the authentication?

The Court: It is not necessary, unless you want to.

Mr. Brown: I don't require it, Mr. Hogan.

Mr. Hogan: I might add for the purpose of the record that there is attached to it an authentication prescribed by the United States Code, Annotated.

Defendant's Exhibit 15:

"In the County Court of Davidson County, Tennessee. Thomas H. Robinson, Sr. v. Thomas H. Robinson, Jr.

At a court held May 7, 1930, this cause came on this day to be heard upon the petition, the answer of the guardian ad litem and the proof in the case, before the Clerk, with a jury of twelve good and lawful men, duly sworn and composed of Henry B. Adams,

1091 G. G. Hunter, W. R. Price, S. P. Gibson, R. C. Flowers, J. H. Rice, J. E. Wilson, M. C. Wright, Geo.

E. Finnegan, D. R. Myers, J. L. Sullivan, J. W. Lovell, and the jury having heard the pleadings and proof, returned into court the following verdict:

State of Tennessee	}	Verdict of Jury
County of Davidson		

The undersigned jurors having been summoned by the Sheriff and sworn by the Clerk to inquire and ascertain whether Thomas H. Robinson, Jr. is a person of unsound mind, upon oath do say:

1st: That the said Thos. H. Robinson, Jr., is a per-

Proceedings

son of unsound mind, and has not capacity sufficient for the government of himself or his property.

2nd: That the property consists of the following:

3rd: That the next of kin are as follows:

Thos. H. Robinson, Sr., James Preston Robinson, and Mrs. Thos. H. Robinson, Sr., and Mrs. Thos. H. Robinson, Jr.

(Signed) G. E. Finnegan, J. W. Lovell, M. C. Wright, Roy Flowers, J. L. Sullivan, W. R. Price, G. G. Hunter, D. R. Meyers, J. H. Rice, S. P. Gibson, John E. Wilson, H. B. Adams, Jurors.

Filed May 7, 1930.

1092 From all of which the court is of the opinion that Thomas H. Robinson, Jr. is a person of unsound mind, incapable of governing himself or his property and that it is necessary that a guardian be appointed for him, and it is so ordered, adjudged and decreed, and it appearing to the court that Thomas H. Robinson, Sr., the father of the defendant, is a suitable person to be the guardian of the defendant the court is pleased to appoint him guardian, and it is so ordered, adjudged and decreed.

The guardian will give bond in the sum of \$500.00 and take the oath prescribed. The costs in the case will be paid by the defendant.

(Signed) Litton Hickman, County Judge.

Recorded in Minute Book 54, page 473."

I will now read the decree or order of commitment:

"In the County Court of Davidson County, Tennessee In re: Commitment of Thos. H. Robinson, Jr. to the Central State Hospital for the Insane.

DECREE

~~This~~ This cause came on to be heard before the Hon. Litton Hickman, County Judge, on this the 23rd day

Testimony of Thomas H. Robinson, Jr.

of May, 1936, upon complaint of Thos. H. Robinson, Sr., alleging that the said Thos. H. Robinson, Jr. was insane.

From the sworn testimony in open court of Thos. H. Robinson, Sr., and Dr. J. W. Fenn and Dr. Paul DeWitt the Court is of opinion and doth decree
 1093 that the said Thomas H. Robinson Jr. is a person of unsound mind and should be confined in the Central Hospital for the Insane.

The Court further finds that the said Thomas H. Robinson Jr. has relatives who are amply able to pay for his maintenance in said hospital.

The Court hereby nominates and appoints Thomas H. Robinson Sr. as guardian for the said Thomas H. Robinson Jr. and upon his giving bond as required by law letters of guardianship will be issued to him by the clerk of this court.

Enter

(Signed) Litton Hickman Judge."

and attached to that is the authentication by the Clerk and by the Judge in accordance with the law.

Q. Now did you stay for some weeks at Bolivar I believe you said?

A. Approximately three months I think.

Q. Were you confined to that Western State Hospital during that three month period?

A. Yes I was.

Q. Have you ever been restored to sanity by any proceeding in any tribunal whatsoever?

Mr. Brown: I am going to object to that. The laws of the state of Tennessee provide that the superintendent of the hospital, when in his opinion the man is sane,
 1094 can release him.

Mr. Hogan: My question is not whether he was released, but whether he was restored by judicial proceedings.

Mr. Brown: That's the effect of the release of the superintendent.

The Court: I think he is entitled to say whether there

Testimony of Thomas H. Robinson, Jr.

was any judicial proceedings. Of course, you can bring out the other yourself. Both can be brought out.

Mr. Hogan: May he answer?

The Court: Yes.

The Witness: Will you repeat that question, please?

Question read by the reporter, as follows:

“Have you ever been restored to sanity by any proceeding in any tribunal whatsoever?”

A. No.

Mr. Brown: A further ground of objection, Your Honor, is that the laws of the State of Tennessee for that purpose allow the superintendent of a state institution to make a finding.

Mr. Hogan: The question is, whether he has been restored by a court.

The Court: I believe all the facts pertaining to that can be brought out by both the defense and the prosecution. Whatever happened on that point, I think is admissible.

1095 Mr. Hogan: Then I take it, he may answer my question.

The Court: Yes.

A. No, I was never taken back before the court or any court, nor did I go through any proceedings at all for the purpose of restoring my sanity.

Q. Were you released or taken away from the Western State Hospital for the Insane?

A. Well, I was taken out of there at the instance of my father over the objections of the doctor, the superintendent of Western State Hospital.

Q. Your father had been appointed your legal guardian, according to that order we just read.

A. Yes, he was my legal guardian.

Q. Did he take you out, your father?

A. Yes. He moved me from Western State Hospital and furnished bond in the County Court.

Q. After your being taken out of Western State Hospital, what did you do?

Testimony of Thomas H. Robinson, Jr.

The Court: Now let's find out when that was.

Q. When were you taken out of Western State Hospital by your father?

A. I recall the date as August 24th, 1930.

Q. Now, with that date in mind, what did you do after being taken out by your father?

1096 A. I returned to my family's home.

Q. Did you get employment, or try to?

A. I made several attempts to procure employment, my father made several attempts also, but I was unable to secure employment for quite a long time.

Q. Did you ever get any employment after you were taken out of Western State Hospital?

A. Yes, in 1931, in the spring, nearly a year later.

Q. Where was that employment?

A. That was with Servel, Incorporated, in Evansville, Indiana.

Q. How long did you work for Servel?

A. One day.

Q. Why did you not work longer?

A. It is hard to say. I became dissatisfied with the work and went back home.

Q. To Nashville?

A. Yes.

Q. Did you obtain any employment elsewhere, or try to?

A. I didn't obtain any employment until June of 1931.

Q. What did you do between the time you left the one day's employment with Servel and June, 1931?

A. I think I stayed more or less at home at that time.

1097 The Court: How long a period was that?

The Witness: I couldn't say for sure just what time I was employed by Servel because I don't recall it.

The Court: You said the spring of 1931.

The Witness: The spring of 1931; yes, sir.

The Court: Can you give it any more definitely than that?

The Witness: No, I can't.

Q. Well, what had been the state of your health or

Testimony of Thomas H. Robinson, Jr.

mind, either, or both, between the date of your being taken out of Western and your attempt to get employment with Serval?

A. Well, when I came back to my home, I found it a little more difficult than ever to obtain employment. It seemed like the stigma of insanity was even worse than the disgrace of the forced marriage at that time, and the fact that I had been adjudicated insane many of my friends at that time shunned me, and I think that I more or less kept to myself at that time too.

Q. Did you have any ideas about your friends?

A. Yes. I rather felt that they were talking about me. Every place that I would go I would see groups of them, and I felt that they were constantly talking about me, about the insanity adjudications and forced marriage.

Q. Did you go back to church?

1098 A. No, I didn't.

Q. Any reason for that?

A. Well, I had some kind of prejudice at that time against the church. I felt that the preachers when I had gone were preaching directly at me rather than the congregation; in other words, I took everything to heart that the preacher said as referring to me myself.

Q. Had you felt that way previously when you had been attending church?

A. No, I hadn't.

Q. Before this forced marriage, I mean.

A. No, I never had those ideas until after that.

Q. While you were in these two insane institutions, did you have any ideas of reference? Did you associate freely with the other inmates?

A. In the insane asylum?

Q. In the insane institutions, or did you stay to yourself?

A. I stayed more or less to myself in the insane asylums, yes.

Q. Did you have any ideas about those people in the insane institutions, from the officers on down to the inmates?

Mr. Brown: Your Honor, I certainly am going to sug-

Testimony of Thomas H. Robinson, Jr.

gest that Mr. Hogan be sworn. He is doing the testimony and Robinson is answering yes or no.

1099 The Court: I think Mr. Hogan can make them less leading if he will try.

Q. While you were in Central State Hospital for the Insane, did you formulate in your mind or have in your mind any ideas concerning the people of that institution?

A. Well, I felt that all the doctors in the institution were against me, and I used to ask them very frequently if I could get out, tried to convince them that I was sane, I felt like they were holding me against my will and against the law, and my desire naturally to get out of the hospital if I could, but they didn't see it my way.

Q. Did you have any idea of persecution from the hands of anybody?

A. The doctors.

Q. Did you associate—along the line of persecution, suppose you elaborate on that and tell how you felt toward them.

A. Well, as I said before, I felt that they were holding me wrongly at the hospital, that they had no right to hold me there.

Q. The law had disagreed with you, though, had it not?

A. It seems that it had.

Q. How did you spend your time in Central State Hospital? Mingling with the other inmates or to yourself?

1100 A. Well, the way it seems to me now, it seemed like I spent it in a dream. I don't recall much about it.

Q. I will ask you about your stay in Western State Hospital. Did you have any ideas of persecution while you were there?

A. Well, I took a dislike to the superintendent of that hospital and I felt like he had taken a dislike to me, Dr. Cocke—Dr. E. W. Cocke.

Q. Was that your feeling toward him?

A. Yes, it was. I was working in the hospital and working outside and getting fresh air and sunshine, and I did violate the rules of the hospital, I know, and neglected

Testimony of Thomas H. Robinson, Jr.

my work and went off to town, and Dr. Cocke locked me up on the ward and took all my privileges from me at that time, and I felt like he was absolutely persecuting me by doing that.

Q. Did you feel that he was right or wrong in his attitude or action toward you?

A. I felt that he was very much wrong.

Q. Did you feel that you were correct and he was wrong?

A. I sure did.

Q. How about your attitude or ideas towards the people of your own city after you were taken out of
1101 Western State Hospital, with reference to any ideas of reference or persecution?

A. Well, I felt like that all my former friends were against me and I had a desire to get away from Nashville and stay away from there. That was my sole idea at that time. I wanted to get away. I felt like everybody in the town was against me and pulling against me. I couldn't get work and I wanted to get out of Nashville.

Q. Did you ever have at any time any ideas of grandeur?

A. Well, I know that while I was in my home, during the time that I was unable to get employment, that I had some ideas along the lines of politics and religion, and it seems that I took an unnatural interest in national affairs rather than in the commonplace interests of an ordinary person. In other words, my interests were not with reality or common things that the average person is interested in at all. It usually was in things that didn't concern me at all, above my head, like national events, and politics, religion.

Q. Did you feel that you had the capabilities or qualifications of coping with those national events?

A. I sure did. I thought that I was qualified to handle them, felt like that I was abused that I couldn't be in there handling them, taking active part in them. I know now that I certainly had no place in that scheme of things.

1102 Q. What is your middle name?

A. My middle name is Henry.

Testimony of Thomas H. Robinson, Jr.

Q. Does that have any significance in your life?

A. Yes. It has quite a bit of significance.

Q. Did it at that time?

A. Yes, at that time, and it had too much significance for me. My family were descendants of Patrick Henry, and some of them made quite a thing of that relationship, descent, ancestry, and I often argued with my people at home and my family that I believed in the theory of reincarnation, that the spirit of Patrick Henry was reincarnated in me, and I felt that because of that I should have some high place in the national affairs. In other words, I was absolutely convinced that I was the reincarnation of Patrick Henry.

Q. And for the purpose of the record, who was Patrick Henry?

Mr. Brown: I'll stipulate that.

The Court: Either stipulate it or let the witness say it.

Mr. Brown: Whichever he wants.

Q. Suppose you tell it, as you understood who Patrick Henry was.

A. Why, Patrick Henry was one of the leaders in the American Revolution and gave his speech before the Second Constitutional Convention in Virginia, and one
1103 of the framers in the Constitution of the Bill—
Declaration of Independence.

Q. Was he the gentleman who said, "Give me liberty or give me death"?

A. He did.

Q. That's your position in this court now, isn't it, Tom?

A. It sure is.

Q. Did you feel that you had any direct tie-in with the life of Patrick Henry?

A. Yes, I did. I felt like at the time that I was practically ordained to carry out his work.

Q. Now, did you honestly feel that way or are you just trying to tell that today in this court room?

A. No. I honestly felt that way at that time. I realize it sounds ridiculous now, but I think I spent a great deal

Testimony of Thomas H. Robinson, Jr.

of my time that period of 1931 and later arguing with my family that that was true, and my family would argue against me and try to dissuade me from my theory, and that would just make me madder than ever. I would go to my room and close myself in my room, I was so mad that they would even contest that theory of mine. I wanted them to agree with me, but they wouldn't do it.

Q. Did you have any arguments with your father other than that?

1104 A. Yes, we had many arguments.

Q. Over what?

A. Politics, religion, and some of my theories at that time.

Q. Did you get so infuriated at any time as to get out of control?

A. Yes, I was out of control on several occasions. I let anger get the best of me.

Q. How would you get when you let anger get the best of you, as you say?

A. Well, I don't know just how to describe that.

Q. Did your personality change when you would get mad?

A. Well, now, I rather think it did; in fact, I know that it did, but at that time I wasn't conscious of any change.

Q. What change would come over you, if any? Would you have different appearance from your eyes, that you know of?

A. I can't remember or recall that I did. I rather think that I did, but I can't say positively because I don't remember that.

Q. Now, is there anything else in your life that you have omitted between the time that you left Bolivar and got this employment at Servel and worked one day?

1105 A. No, not other than I have already stated.

Q. Did you get any employment in 1931, or try to?

A. Yes, in June of 1931 my father and I came to Louisville, came here to Louisville, and at that time we called on Mr. C. C. Stoll at the Stoll Oil Refining Com-

Testimony of Thomas H. Robinson, Jr.

pany, 227 West Main Street, I believe it was.

Q. Had your father known Mr. Stoll or any member of the Stoll family before he brought you here?

A. My father had formerly been associated with Mr. Stoll many years ago in some kind of a venture known as the Daniel Boone Axle Grease Company, many years ago. When it was, I do not exactly recall.

Q. Had you, yourself, known Mr. Stoll or any member of the Stoll family before your father brought you to Louisville?

A. Not at that time, no. That was my first introduction to Mr. C. C. Stoll.

Q. Did you obtain employment with the Stoll Company as a result of your father bringing you here, or otherwise?

A. Yes. At the office I was introduced to Berry Stoll, and as a result of our conversation I was given a job with the Stoll Oil Refining Company. They wanted me to start in as a filling station attendant and work my
1106 way up. Mr. Stoll promised that he would make me a supervisor in the company eventually.

Q. Did you come here and live in Louisville then?

A. I did. I brought my wife and child up and we lived here in Louisville at that time, and I took up the employment at Second and Broadway station of the Stoll Oil Company.

Q. Where did you live in Louisville at that time?

A. First lived at 418 West Oak Street and later moved to 1521 S. First Street, and again in Crescent Hill. I don't recall the address in Crescent Hill.

Q. What were your duties at the Stoll Oil Refining Company, Second and Broadway station?

A. That of a filling station attendant, to fill up gas tanks, take care of the water, check the oil, wipe the windshields—regular course of employment of filling station attendant—take care of the parking lot in the rear of the station.

Q. How long did you work for that company at that station?

A. I worked there for a period of approximately six

Testimony of Thomas H. Robinson, Jr.

weeks.

Q. Just continue on and tell us what else happened to you here in Louisville.

A. You mean, while I was working with the Stoll
1107 Oil Company?

Q. Yes, if anything did happen.

A. During the course of the time I was at the station, Mrs. Alice Stoll drove in with a car and parked it on an average, I would say, of several times a week. I don't know how often. I would park her car for her. I had to park it or get a ticket from her. I was told at the time when she came in the station she didn't require a ticket, the manager of the station informed me to that effect when I first went to work there.

Q. After you were made acquainted with who she was, did you recognize her then as she came in later?

A. Yes, I had to, because it was my duty to issue tickets, parking tickets, for the cars and collect for them later on, and I naturally had to know her or otherwise I required a ticket from her to park her car.

Q. Did you ever have any conversation with her?

A. Yes, I did, quite frequently.

Q. Suppose you tell the jury what contacts you had with her, if any?

A. It was merely commonplace conversation at the time about trivial matters. I think we engaged in somewhat of a flirtation, you might say, at that time. I parked her car. Often she would drive her car into the parking lot and leave it in the driveway and get out and go
1108 about her business, and I would take her car and park it for her while she was gone. Sometimes when she would return I would get the car and back it out and get it ready for her to drive off in.

Q. Did you ever have any contact with Mrs. Alice Stoll?

A. Yes, I did.

Q. Suppose you tell in your own words what your connections with this filling station and with Mrs. Stoll were, in your own words.

A. Well, now, I don't believe I understand you. That

Testimony of Thomas H. Robinson, Jr.

was the only connection I had with Mrs. Stoll at the Second and Broadway station. However, I did meet her later on, near the station on the River Road. While I was still employed at Stoll I had been down to the Stoll oil plant down near the River Road to see Mr. Arthur Youngerman, who as I understand it is a nephew of Mr. Stoll, and as I was leaving the Stoll plant I saw Mrs. Stoll at the station which was—

Q. (Interrupting) When you say Mrs. Stoll, which Mrs. Stoll?

A. Mrs. Alice Speed Stoll. I saw her at the station, at the Stoll Oil Station across from the plant.

Q. Did you talk to her on that occasion?

A. No. She smiled at me and recognized me, a
1109 case of mutual recognition. At that time I followed her car. She and I rode alongside each other along one of the streets, I don't recall what street it was, and engaged in snatches of conversation while we were driving along, sometimes side by side, until we got to what was then known as the Cut-off Bridge on the River Road.

Q. Did you leave her then and she go her way and you go yours?

A. No. There was some kind of a roadside inn right above the Cut-off Bridge, and she pulled her car in by the side of that inn, more or less towards the back. She got out of her car and got into my car.

Q. Where did you go, if any place?

A. I drove out the River Road to a lane at that time that led to Rose Island Ferry.

Q. Did anything—what happened then? Did you proceed on or what happened?

A. Well, I don't know just what you mean.

Q. I mean, did you stop the car or did you turn around and come back?

A. We stopped at a secluded spot on this lane leading to the Rose Island Ferry.

Q. Suppose you tell the jury in your own words anything that happened on that occasion, if it did.

A. Yes. At that period Mrs. Stoll and I en-
1110 gaged in sexual intercourse.

Testimony of Thomas H. Robinson, Jr.

Q. Did anything else happen after that?

A. We drove back to where her car was parked by this roadside inn, and I let her out. She got into her car and before she left we made some kind of tentative arrangements for another date later on.

Q. Did you ever meet her again on any other occasion?

A. Yes. I met her a second time down town in the city, several days after that. I don't recall whether I called her up or whether it was the result of our conversation before we left the last time, but I did meet her down town in the city one afternoon, I think I was still employed with the Stoll Oil Company at that time.

Q. What happened on the occasion of the second meeting, if anything?

1111 A. We drove out the Dixie Highway to a spot that I know as the Beach Grove tourist camp.

Q. How did you get out to that camp?

A. Well we drove either the 7th Street Road or 18th—

Q. (Interrupting) I mean in what kind of a vehicle? By what means of transportation?

A. It was my own automobile. A Chrysler 62 Coupe with a Tennessee license plate on it.

Q. Well what happened at the Beach Grove cabins? Is that what you said it was?

A. The Beach Grove tourist camp. We registered there as man and wife.

Q. Well did anything else happen there?

A. Yes. During the course of the afternoon we engaged in sexual intercourse three or four times, I would say.

Q. Did you ever see her after that?

A. I did.

Q. Suppose you tell the jury now, without my asking you any questions, of any other meetings you had with her?

A. On one other occasion we went to the Beach Grove Tourist camp. That was two times we went there. I do not recall whether it was during that same six weeks period

I was working for the Stoll Oil Company or not. I
1112 know we did go out there again on one other oc-

Testimony of Thomas H. Robinson, Jr.

cession. About that time I quit the Stoll Oil Company and took a job in the Starks Building with the Mutual Life Insurance Company, of Baltimore. I had a debit which gave me time off in the afternoon to do as I pleased and during one afternoon of that period that I was in Louisville I would say it was the early part of July or possibly the middle of July, I can't say for sure, we went to—over in Indiana, Jeffersonville, Indiana, across the Municipal Bridge and at the toll gate on the bridge I recall that Mrs. Stoll gave the man the required fee. I think it was a half a dollar at that time. I am not certain of that. We drove on to the outskirts of Jeffersonville, near some roadhouse there I think was known at that time as the Log Cabin, and there were some tourist camps right above this log cabin, a roadhouse. We stopped in one of those—it had a white front on it; seemed like it was a fairly new place. It had a store in connection with it and the main office, and it had cottages in the back and we registered there as man and wife and took one of the cottages in the rear and stayed there during the course of the afternoon and returned to Louisville, and during our stay in that camp we again had intercourse, I don't know how many times.

Q. Was that the last time that you met with her
1113 during that year.

A. That was the last time I saw Mrs. Stoll until 1934.

Q. Did you leave Louisville during the summer of 1931?

A. Yes; I left Louisville sometime in July or August of 1931, and went to Chicago. I obtained employment in Chicago.

Q. What did you do in Chicago?

A. I first went to work for the ABC Oil Burner Company; at Winnetka, Illinois.

Q. After you had left Louisville, did you go back to your home in Nashville before you went to Chicago?

A. Yes, I went back for a few weeks and through my father I made arrangements for this job at Winnetka.

Q. How long did you stay in Nashville after you had been in Louisville here during the summer of 1931?

Testimony of Thomas H. Robinson, Jr.

A. Well I can't recall just what period of time I stayed in Nashville. I wouldn't know that.

Q. I know, but with reference to weeks or months?

A. I would say that it was at least two months because when I arrived in Winnetka I know it was late fall.

Q. And what did you do? You say you got a job with the ABC Oil Burner Company?

A. Yes.

1114 Q. What period of time did you work for that concern?

A. I worked there for maybe a period of two weeks and then quit.

Q. Did you assign any reason for quitting?

A. No, I did not. I just quit.

Q. And then where next did you work or try to get employment?

A. I came home from Winnetka I think back to Nashville, and I believe the next period of my employment was some time later with the Andrew Jackson Business University in Nashville.

Q. Well, what association or connection did you have with the Andrew Jackson Business College in Nashville, Tennessee?

A. I was merely a salesman for night law courses at that place.

Q. By salesman, what do you mean?

A. Well I would sell these law courses to various prospects, prospective students.

Q. Did you meet with any success along that venture?

A. With very mediocre success. I stayed there a short time and sold a few courses and was not able to make a go of it and I quit that job.

1115 Q. And what did you try to do next?

A. That was 1932, I believe, and—

Q. (Interrupting) Did you ever have any connection with the Spreckles Estate?

A. Yes. Mr. Claude Spreckles and his attorney came to Nashville with a garbage disposal company that they were trying to organize, and for a short period of time I was connected with Mr. Spreckles and I was unable to

Testimony of Thomas H. Robinson, Jr.

make a go of that and I severed my connection with them. That was in the late fall of 1932.

Q. Now, with reference to your married life, was your married life docile or was it stormy?

A. I would say it was rather hectic.

Q. You did have a son by this second wife, I believe?

A. Yes; I did.

Q. When was that son born in connection with your second marriage?

A. He was born while I was in the insane asylum in 1929—August 31, 1929.

Q. When was—when you say that your married life was hectic, do you mean that you had family arguments, or just what do you mean?

A. Why I think we had quite a few arguments.
1116 I think I was mostly to blame for those.

Q. Well did you ever get out of control with your temper?

A. Yes, I did, I think, on frequent occasions.

Q. Did you ever attempt to organize any school of any kind?

A. Well I had some ideas about organizing a law school. I was not satisfied with the way the University ran their law school. In other words, I had taken a dislike or prejudice toward the University because of the fact that I had to leave there, or did leave there after that trouble. And I just felt they did not teach law right at Vanderbilt University, and I wanted to organize a law school of my own.

Q. Did you have any ideas about how law should be taught?

A. I sure did. In my own mind.

Q. Did that agree with Vanderbilt's ideas?

A. No it didn't.

Q. Well did you feel that you had an inferior or superior idea of the way of teaching law?

A. I thought it was quite superior to the way they taught it at Vanderbilt.

The Court: Members of the Jury, we will take
1117 the noon luncheon recess. Do not discuss this mat-

Testimony of Thomas H. Robinson, Jr.

ter among yourself in any way or permit anyone to talk to you about it to you or in your presence.

At this point there was a recess until after lunch, after which the following proceedings were had:

Direct Examination Continued by Mr. Hogan.

Q. How long did you attempt to conduct a law school or have any part in it?

A. Are you speaking of the Andrew Jackson University night law school?

Mr. Hogan: No, I will withdraw that question.

Q. Now, with reference to how the law school at Vanderbilt should be run, did you offer any ideas to the faculty or management at Vanderbilt?

A. No, I don't think I did.

Q. Did you retain those ideas in your own mind?

A. Those were mostly in my own mind at that time.

Q. Did you ever go to Indianapolis prior to 1932 in search of employment or otherwise?

A. Yes, I had been in Indianapolis at some time during the period of 1932 or 1933—I am not sure as to what time it was.

1118 Q. Well, with reference to trying to keep your employment in sequence, can you tell us where next you had tried to gain employment?

A. I think it was in Indianapolis at an employment agency there, and through this employment agency I secured the next job.

Q. And where was that?

A. That was at the Mar-Main Arms Apartment Hotel at South Bend, Indiana.

Q. How long did you work at that apartment?

A. For a period of 3 months.

Q. What were your duties in connection with your employment?

A. Well mostly—my wife and I both were employed there. She was the housekeeper and I was the maintenance man.

Q. Did you ever go to Chicago after that?

A. Following my discharge from there, I did go to

Testimony of Thomas H. Robinson, Jr.

Chicago.

Q. Why were you discharged from your South Bend apartment hotel job?

A. I think that at the time I had made some accusation against the manager of that hotel, but I forget what the details of it were now, and I know that he became insulted over the matter and discharged both me and my wife.

1119 Q. Did you try to obtain any other employment in Chicago, or in that vicinity?

A. Yes, I tried from the period of March 1933 until I came back to Nashville in the summer of 1933 to obtain employment in Chicago, but I was unable to get it.

Q. Well what means did you use to obtain employment in Chicago?

A. Well I registered with all of the employment agencies. I answered ads in the newspaper help wanted column, and through connections of my father's and friends of mine attempted to gain employment. I wrote letters of application on the typewriter to various concerns.

Q. Was that the period in which it was difficult to obtain employment?

A. Yes, it was. It was during the depression.

Q. What success did you have with your applications for employment?

A. Absolutely none.

Q. About how many letters did you write—letters of application for employment if you remember?

A. Well I would say literally hundreds of them.

Q. Did you ever write any books, or attempt to?

A. At the time I was employed with the business university, I did write a book on how to get a job, based on the experience I had had in the employment department of this school.

1120 Q. Were you able to use the fruits of your own books or writing?

A. Well I didn't seem to be able to get much benefit from it.

Q. At any rate, you didn't get a job?

A. I didn't get a job.

Testimony of Thomas H. Robinson, Jr.

Q. Did you ever run any want ads in any Chicago papers?

A. I ran one ad in the Chicago Tribune.

Q. What effect upon your mind did your inability have to procure a job?

A. Well at some time during the time that I was attempting to get employment I think some employees—prospective employer I mean, either told me or imagined it I can't remember which it was, that Mr. Stoll was giving me bad references.

Q. What Mr. Stoll do you mean?

A. Mr. C. C. Stoll. I had given his name in all my applications for employment. Every place I went his name was mentioned as my former employer, at the Stoll Oil Refining Company.

Q. Did that belief or information have any effect upon your mental condition?

A. It certainly did. I felt that Mr. Stoll was
1121 purposely keeping me from getting work. Every place that I went for employment and was turned down from one place to another, which must have been hundreds of them in that period of time, I felt it was solely through Mr. Stoll giving me a bad name that I was unable to secure employment.

Q. Did you believe that in your own mind?

A. I firmly believed it.

Q. How were your funds about that time?

A. Well I think for practically all of that time my funds were very low.

Q. Did you ever make application to Mr. Stoll or anybody of the Stoll Oil Refining Company for reemployment after you had worked here in Louisville for six weeks?

A. Yes, I did. That was in 1934—possibly in May of 1934.

Q. Did you see Mr. C. C. Stoll personally?

A. Yes; I did.

Q. Tell the jury the conversation that you had with him, or just what happened on that occasion?

A. Well, Mr. Stoll told me at that time that it was not the policy of the company at that time of the company to

Testimony of Thomas H. Robinson, Jr.

re-hire employees that had formerly quit. And he made some mention of the depression, and that the country was in the hands of a dictator. He was speaking of our now President Roosevelt; and that he would not spend
 1122 one dime to even buy any paint for his filling stations—

The Court (Interrupting): Is this evidence competent, gentlemen?

Mr. Brown: No, it isn't.

The Court: There is no objection made to it, but it seems we are going pretty far afield, into hearsay.

Mr. Hogan: It has a bearing upon his mental attitude.

The Court: I don't care whether it has any bearing or not, what Mr. Stoll said to this witness is purely hearsay, isn't it?

Mr. Hogan: Well I think, if Your Honor please, in these mental cases or insanity cases that anything that anybody says to the person or subject is competent to show what effect it would have upon his mental condition. And it is certainly competent for that purpose.

The Court: All right. Go right ahead.

Q. Well did he re-hire you?

A. No, he did not.

Q. Now what effect did his statement and words to you have upon your mental condition?

A. Well I then felt convinced that it was through Mr. Stoll that I had failed to get employment with these other concerns.

Q. Did it arouse in you any spirit of Patrick
 1123 Henry-ism?

A. Well I felt that at that time that Mr. Stoll was—this was in my own mind at that time, I can only state how I felt—that he was a menace to the country. I thought that he was actually the person that was contributing to the downfall, and I thought something ought to be done about it. I didn't know what. But it was firmly entrenched in my mind that something should be done about Mr. Stoll.

Q. Well was that an idea of revenge or was it an idea of some other kind?

A. No, I cannot say it was any revenge or any per-

Testimony of Thomas H. Robinson, Jr.

sonal harm, but it was more of an inspiration derived from the fact that I felt I had descended from Patrick Henry—more of a patriotic feeling, you might say.

Q. You mentioned the word “inspiration”. Now what do you mean by that?

A. Well I felt inspired to do something about it. Due to the fact that I felt I was descended from Patrick Henry, I felt like I was Patrick Henry reincarnated.

Q. Then where did you go after you did not receive that reemployment at the Stoll Oil Refining Company?

A. At that time, why I went back to Chicago, I think. But just previous to that I had worked at Du Pont in Nashville, previous to this time.

Q. Do you recall what year that was?

1124 A. I worked for Du Pont from November 1933 until May of 1934, at which time I was discharged because of my insanity record—which I had failed to state upon my application for bond.

Q. Where did you go from Du Pont?

A. Well it was at that period that I came to Louisville and called Mr. Stoll, and from there I went back to Chicago.

Q. Well let me backtrack now and ask you if those ideas you had with reference to Mr. Stoll in 1934 or at that time are your ideas now?

A. No; absolutely not. As a matter of fact, today I am not at all sure that anyone told me that Mr. Stoll was giving me a bad reference. I cannot say today whether that actually existed, whether some man that I interviewed actually told me that or whether I imagined it.

Q. But did you have it in your mind—

A. (Interrupting) I had it in my mind at that time.

Q. Now you went from Du Pont in Nashville, or just outside of Nashville, to Chicago again. What did you do there?

A. In Chicago I obtained employment through a friend of mind as a night janitor in a building in Oak Park.

1125 Q. How long did you have that job?

A. A few weeks.

Q. What kind of work did you do as night janitor?

Testimony of Thomas H. Robinson, Jr.

A. Regular janitor work—cleaning halls and cleaning offices. I worked during the daytime—after I had finished my night work I worked during the daytime until about 3:30 in the afternoon tearing down a building.

Q. And after you left that employment, then what did you do?

A. I think that was the last job that I held. I moved from there to Magnolia Avenue in Chicago.

Q. Now suppose on from that time on detail what happened in order of sequence, if you can?

A. Well it is rather difficult but I will take it up and do the best I can on that. At the time I moved from Magnolia Avenue, I stayed there a few weeks, and I rented a car from the Saunders U-Drive-It Company for the purpose of moving from one apartment to another, and I did pack up my belongings to move to the South side of Chicago but instead my wife and I kept on going until we reached Indianapolis. We put up at a hotel in Indianapolis, I forget which one, and we then rented an apartment at 2735 North Meridian Street in Indianapolis?

Q. And what apartment number was that?

1126 A. Apartment 2.

Q. That is the apartment about which there has been some testimony in this court on this trial?

A. Yes.

Q. Do you recall about what time you rented that apartment?

A. It was some time in September—around the early part of September. The first week in September.

Q. And did you work in Indianapolis?

A. No I didn't. I made several attempts to secure employment there and I was unable to.

Q. What effect did that have on your mental state?

A. You might say that added fuel to the fire. That made me more perturbed than ever. I brooded over it considerably. At that time I was in such a mental condition that I don't think I felt anything at all.

Q. While you were in Indianapolis did Mr. Stoll enter your mind? Mr. C. C. Stoll?

A. Constantly.

Testimony of Thomas H. Robinson, Jr.

Q. Tell the jury how his name or his person associated with your mind or your mental condition?

A. Well I felt that Mr. Stoll had been the cause of most of my troubles. I felt that something should be done about it. I felt that he was a menace and I looked
1127 upon him as being a powerful capitalist and a man who was destroying our country, responsible for the depression and I wanted to do something about that.

Q. Well did you want to do something about it from an idea of revenge or from patriotism?

A. No; it was solely through a motive of patriotism that I wanted to remove him.

Q. From that point on just tell what you did that in any way connected your life with the members of the Stoll family?

A. Well while I was in the apartment I prepared some kind of a ransom note with the idea of abducting Mr. Stoll. I made the note out in the name of Mr. C. C. Stoll. And I had that purpose in mind to kidnap Mr. Stoll, and—

Q. (Interrupting) C. C. Stoll?

A. Yes, C. C. Stoll. I took my car and my wife and we drove to Louisville and she got on the train at the Union Depot and went home and I registered here at the Tyler Hotel. That was the early part of October 1934.

Q. Now you say your car. Do you mean this car that you had rented in Chicago?

A. This car that I had kept from the Saunders U-Drive-It Company, yes.

Q. And you got here on October 8th, did you?

A. I think it was October 8th that I checked into the Tyler Hotel.

1128 Q. And that was in the year 1934?

A. Yes.

Q. All right. Now your wife was not with you. She had gone on?

A. She had gone to Nashville.

Q. Now just tell the jury what happened after you arrived in Louisville and stayed at the Tyler Hotel?

A. Well I still had in mind the purpose of kidnapping Mr. Stoll and the next day I think it was I drove out to his

Testimony of Thomas H. Robinson, Jr.

residence on Cherokee Parkway and entered the home on some kind of a pretense or other that I was a telephone man. I went into the house looking for him and didn't find him; and I went over to the adjoining house of Mr. George Stoll, hoping to find him there, and he was not at Mr. George Stoll's home; and so I left there and came on back to town and apparently gave up the idea for the time being.

Q. Well what did you do the next day or what did you do on October 10th?

A. I think at that time I, as I could not find Mr. Stoll, I planned to kidnap Berry Stoll. I was not sure where he lived, and I got the name from the phone book and I drove out to some filling station, this Mr. Kottke who was on the stand, I do recall talking to him and asking
 1129 his directions to the Stoll residence.

Q. Did you associate Mr. Berry Stoll with Mr. C. C. Stoll?

A. I knew Berry Stoll.

Q. Did you associate Berry Stoll in your mind with the C. C. Stoll situation?

A. He was his son and I felt them equally blamable for whatever offense that I conceived in my mind that they had committed. So I could not find C. C. Stoll and I drove out to the Berry Stoll residence with the purpose in mind of kidnapping Berry Stoll.

Q. Now what day was that. I mean, what day of the month?

A. I am not sure myself but I think it was October 10th.

Q. 1934?

A. Yes.

Q. And what did you do when you arrived at Berry Stoll's home?

A. I first entered the house. A maid came to the door and I entered the house—I think I told her I was the telephone repairman or lineman. I entered the house and picked up the telephone and made some pretense of calling somebody and I don't remember who it was. She
 1130 told me that Mrs. Stoll was upstairs and I thought

Testimony of Thomas H. Robinson, Jr.

possibly she would recognize my voice, but she evidently didn't. I asked the maid if there was an extension upstairs and she said there was in the bedroom, and her to go up and use that extension, thinking that—she told me that Mrs. Stoll would move over into the guest room while she tried the extension up there. I thought I could go up and talk to Mrs. Stoll personally before Berry came home. I wanted to talk to her personally first. This was in the early part of the afternoon—I would say about two o'clock.

Q. Well did you finally see Mrs. Alice Stoll there in that residence?

A. Yes. I talked to her in the guest room. The maid happened to be in the guest room also.

Q. Well just tell the jury what happened as you remember it?

A. I went into the guest room and Mrs. Stoll smiled and said, "What are you doing here?" and I told her, I said, "I came to kidnap Berry Stoll". And she seemed to take it as a joke and after she saw that I was serious about it she said "Well you can't get away with that. You know Berry. You are just an amateur", or something to that effect and she said, "You can't get away with it."

Well we talked for about an hour and I tied her **1131** hands loosely with some wire with the intention of taking Berry when he came home. And at that time she suggested that she give me a check which I refused. I turned the check down. And then Mrs. Stoll suggested to me that she would go with me herself instead of taking Berry. She did not want Berry to find me in the house when he came home. We had talked already for about an hour or so and it was getting about time for Berry to come home and she suggested that she go herself and she stated to me that she would help me obtain the money if I would give her half of it. I didn't know whether she was joking or whether she meant it or not but she stated that she would help me obtain the money if I would give her half of it. At that time why I decided to go with her, take her with me. I let her secure a coat. She took the wire off of her wrists, it was only on there loosely. And she got

Testimony of Thomas H. Robinson, Jr.

her coat from her closet, and we went down the stairs and out of the house and she got in the back end of the car and we left the Stoll residence.

Q. What happened to the maid all this time?

A. I first tied the maid's hands, and she was on the floor by the bed. When Mrs. Stoll suggested that I take her instead of Berry, that there would be trouble if Berry got home, and she mentioned something about me giving her half of the ransom money, I told her that

1132 the note had just been made out for \$30,000 and that if I was to give her half of it I would have to raise the amount, and I had this ransom note made out to Mr. C. C. Stoll in my pocket. I took that note out of my pocket; changed the amount from \$30,000 to \$50,000; changed the name on it in pencil for Mrs. Stoll instead of Mr. C. C. Stoll. I marked her name in there in pencil across the face of the ransom note in pencil "For Mrs. Stoll." I changed the amount in pencil to \$50,000 instead of the \$30,000 that was in there. I went over to tie the maid's feet and this note fell out on the floor and this was the way the note was left in the home. It fell out of my pocket while she was tied up on the floor, as I was tying her feet.

Q. Now, Mr. Speed's name has been associated with the ransom note. Do you know anything about that? If you do, tell the jury.

A. I can't say definitely why I put Mr. Speed's name in the note. I don't remember. I had some conversation with her about her father—the amount of money to be obtained was \$50,000, and I think she said that she did not think Berry or Mr. Stoll could get that amount of money up; that her father would have to get it. And on the strength of that I put Mr. Speed's name on the face of the ransom note.

1133 Q. Did she walk to the car or did you carry her to the car?

A. She took her coat from the closet, this checked coat that she obtained from the closet, and put it on. She put her hands through the sleeves of it. Her wrists were not bound. She walked down to the car and got in the back of the car. And it was my intention—our intention—to

Testimony of Thomas H. Robinson, Jr.

leave by the River Road and it was then nearing 5 o'clock the time for Berry to come home and she was apprehensive that she would see Berry on the way and so she knelt in the bottom of the car until we passed Berry's car. I passed Berry's car halfway between Lime Kiln Lane and the cut-off bridge on the River Road.

Q. Was there any change made in the position of Mrs. Alice Stoll in that car after you passed Berry Stoll on the River Road?

A. Somewhere in there. I think it was about adjacent to the Louisville light company, some plant over to the right of the River Road, coming this way, she got out of the car and got on the front seat.

Q. You mean the Louisville Water Company?

A. I guess it was the water company—some plant that was on the right toward the river coming this way on the River Road.

Q. And where did she get then?

1134 A. She got on the front seat of the car—of the Ford.

Q. Where did you proceed from there with her on the front seat of the car?

A. I drove towards the Municipal Bridge. I don't recall the streets that I came on unless it was Main or Market, one of those streets.

Q. And did you cross the Municipal Bridge?

A. We did.

Q. During the progress of your trip to the Municipal Bridge did you make any red light stops?

A. Why yes, coming down the Main Streets there I naturally ran into several red lights. Whether they were green or red I couldn't say but they were stop lights.

Q. Well did you make any stops at any red lights if they were red?

A. Well I can't recall that I actually made any stops but in the normal course of driving I am sure that I did make some stops.

Q. When you went across the Municipal Bridge, where was Mrs. Alice Stoll?

A. She was on the front seat of the car.

Testimony of Thomas H. Robinson, Jr.

Q. Was her mouth taped, or was she gagged in any manner?

1135 A. She was not.

Q. Was she free to talk?

A. She was and she did talk.

Q. Did you stop at the bridge attendant?

A. We stopped at the toll gate and paid the toll fare on the bridge.

Q. Did she make any attempt to call his attention to the fact that she was being kidnapped?

A. No, she did not.

Q. Then what did you do after you passed the Municipal Bridge?

A. Then we went out the highway out through Jeffersonville and as we passed the tourist camp where we had formerly stayed, why some comment was made about it. I don't recall just what the remark was. But she and I made some remark. We later passed through Speed, Indiana, and I made some wisecrack or some kind of a remark about the Speeds, and she seemed to take exceptions to it at that time, and we had a little argument about that. I knew the town of Speed Indiana was where the Cement Company was located that her father owned and as we passed through this town I made some remark about the Speeds and she answered me with some heat—I don't know—we had a little argument about that. I don't recall what it was, or what the words were or anything about it except that.

1136 Q. Now, did you continue on up the road?

A. We did.

Q. Where did you go?

A. We drove to Indianapolis.

Q. What did you do when you got to Indianapolis?

A. We drove into the garage that I had rented back of the apartment.

Q. Did you at any time ever bind her hands after leaving the Municipal Bridge, or leaving her home, for that matter?

A. No; her hands were not bound, nor was she gagged. She had no adhesive tape over her mouth.

Testimony of Thomas H. Robinson, Jr.

Q. And what did you do when you got to the apartment at Indianapolis?

A. We got out of the car and walked into the apartment.

Q. What did you do after you got into the apartment, you two?

A. Why the kitchen was rather disorderly. We cleaned up the kitchen and she cooked some eggs and made some coffee and we sat down and ate.

Q. Did she make any attempt in any way to get away?

A. She did not.

1137 Q. Tell the jury what happened in point of order or sequence if you can from the time you reached that apartment until she was returned to her home?

A. Well, we were in the apartment for a period of seven days, during the first few days we ate, drank beer, listened to the radio; read the newspapers and had discussions in the living room most of the time. She suggested writing these letters that were exhibited here to Miss McHenry, who was Miss McHenry at that time; and she told me about the slippers that she had bought that Miss McHenry would know.

Q. What kind of beer did you drink? You two?

A. I insisted that we drink Patrick Henry beer.

Q. Well did you drink that brand of beer?

A. That is the only brand we drank.

Q. Where did you procure your groceries and provisions and beer?

A. At what is known as Sam's Subway. It was in a corner of the apartment building, in the basement. It was a delicatessen, lunches.

Q. Now did you go yourself to make these purchases?

A. Yes; I went out several times a day to buy food, buy newspapers—mail these letters.

1138 Q. What did you do with her on those occasions?

A. I left her in the apartment.

Q. I mean, was she bound or tied, or was she running around loose in the apartment?

A. She was never bound until the last two days that

Testimony of Thomas H. Robinson, Jr.

I was in the apartment. The first 4 days she was never bound or gagged or interfered with in any way.

Q. Do you say that you went out and left her in the apartment alone, free to escape or go where she liked?

A. I sure did.

Q. Where else would you go except to get provisions and beer at Sam's Subway?

A. I droye several blocks to get to grocery stores and get groceries. I drove down town to mail these letters. It seems that I made several phone calls there, one to Miss McHenry, Mrs. Stoll's girl friend.

Q. Had you known Miss McHenry's name before this?

A. No; I didn't.

Q. Did you know her telephone number?

A. I knew it from Mrs. Stoll giving it to me.

Q. Who suggested that you call her?

A. Mrs. Stoll suggested it, because I didn't know Miss McHenry.

Q. Did you ever buy any newspapers while you
1139 were in that apartment?

A. Why, we bought the daily papers.

Q. Did you have a radio in there?

A. We did.

Q. Did you play it?

A. Yes and listened to the news broadcasts on the case.

Q. Did she appear anxious to get away from there for the first few days?

A. Not for the first 3 or 4 days, she didn't.

Q. Just what did she do?

A. Well she seemed to, as far as I know, act perfectly calm and she was not excited, and took it very easy. She took it as a big joke.

Q. Did you ever threaten her with a pistol at any time during that time?

A. No I did not. I never had threatened her with any pistol. When I went into her home my pistol was in the glove compartment of the Ford. And I did not put the pistol on the maid, Mrs. Woolet, at all.

Q. Did you put it on Mrs. Stoll?

A. I did not. I did not have a pistol in the house.

Testimony of Thomas H. Robinson, Jr.

Q. Did you have a pistol in your apartment at
1140 Indianapolis?

A. Yes, the pistol was in the apartment; it was usually kept under the pillow on the lounge. I kept it under the pillow on the lounge nearly all the time. I didn't carry it in my pocket.

Q. Did she have access to it?

A. Well I could not say whether she knew it was under the pillow or not—I am rather inclined to think she did not know it was there.

Q. Did you ever display it in her presence?

A. No, I don't think there was any occasion to even showing the pistol from the time we got to the apartment to the time I left.

Q. Who cooked the meals during the days you were there?

A. Mrs. Stoll.

Q. Did you have any part in that?

A. Well I naturally helped. I helped with the dishes and did what I could.

Q. Did anybody ever come around the apartment, such as trades-people?

A. Yes, there were salesmen and trades-people and dry cleaners and garbage men and the milk man. The normal run of people who usually come to an apartment.

1141 Q. Well what about the shades, were they down or up?

A. I think the shades were down for most of the time in the living room and the bed room, but one day she suggested that the shades in the living room be raised, and they were raised possibly that much (indicating about a foot) from the bottom of the window.

Q. Did she have full access to the bathroom?

A. At all times.

Q. Did you ever forbid her to close the bathroom door completely?

A. She closed it at all times so far as I know.

Q. Did that bath room door have any lock on it?

A. Yes, it had a regular bath room lock on the inside of the door.

Testimony of Thomas H. Robinson, Jr.

Q. Will you describe that to the jury so they may know about that?

A. Well it was just the regular lock that you find in most bathrooms. I don't know how to describe it—it had a long plange you turn over—no key. The lock part is all built right into the door.

Q. Was the lock on the inside?

A. It was locked from the inside.

Q. Could she have turned that lock and locked
1142 the door against you?

A. She did turn the lock when she went in there.

Q. Did she ever make any attempt to raise the window or get through the bath room window?

A. Well I don't know whether she ever did or not.

Q. Well, could she have?

A. She could have but I can't say that she did. I know she didn't go out the window.

Q. Now with reference to the windows in that apartment. Take the living room and describe to the jury those windows—how many there were?

A. There were 3 windows in the living room; they were rather close to the floor, and the apartment was on the first floor and it was a very short distance from the ground of the court. It faced on the court of the apartment. There were 3 windows in the bedroom looking out on the walkway and into the windows of the adjacent apartment, but the shades in the bed room were kept down practically at all times so far as I know.

Q. How close was this adjacent apartment that you speak of?

A. Well I don't know. I have heard it stated here in the evidence but my guess would be just what it was said here, 8 feet.

Q. Well, were or not the apartment windows of
1143 the adjacent apartment close to the windows of the bed room of apartment No. 2?

A. Yes, the windows in the opposite apartment were right across the bedroom windows of our apartment.

Q. Could she have attracted the attention of those people in the opposite apartment?

Testimony of Thomas H. Robinson, Jr.

A. Well if she had wanted to I rather think she could have.

Q. Could she have attracted the attention of the other people who came into the court and used the court walk-way going to those other various apartments in that U-shaped apartment building?

A. Yes, I am sure she could.

Q. Well, did she try to do that?

A. Not to my knowledge.

Q. A letter has been introduced here as having been written by her to Berry Stoll, her husband. Did she write that letter?

A. Yes she did.

Q. Did you order her to write that letter?

A. No I didn't. I didn't order her to write any letters.

Q. Did you order her to write the letter to Miss 1144 McHenry?

A. No I didn't. It was her own idea to write Miss McHenry because I didn't know Miss McHenry existed.

Q. Did you dictate the words of that letter, or any letter?

A. I might have helped make some suggestions in the letter.

Q. Were any writing facilities in that apartment?

A. Yes, sir.

Q. What were they?

A. Well there was a typewriter and paper and pen and all kinds of paper.

Q. Did she write the letter which has been identified as the letter addressed to "Dear Mr. Intermediary?"

A. Yes; she wrote that letter.

Q. Did you order her to write that letter?

A. I did not.

Q. Who was named in the ransom letter that has been identified as the intermediary?

A. My own father.

Q. When did you insert his name?

A. Well I am not sure whether I put that in there—I think I had that in there at all times when I prepared

Testimony of Thomas H. Robinson, Jr.

the ransom note.

1145 Q. Did you name his street and address in Nashville?

A. I did.

Q. Now back to the apartment in Indianapolis did you continue to bring in newspapers?

A. Yes, I bought papers and brought them all during the seven days we were there.

Q. Did you allow Mrs. Alice Stoll to read those newspapers?

A. She read them all.

Q. Did you keep the radio going all the time?

A. I wouldn't say all the time but we listened to most of the programs and news broad-casts particularly.

Q. Now you left there on October 16th, didn't you?

A. Yes I think it was.

Q. 1934.

A. Yes, 1934.

Q. You were away some 18 months or more, were you not?

A. I think it was 19 months.

Q. And where were you apprehended?

A. In Glendale, California.

1146 Q. Mr. Bugas and other members of the FBI, of course, apprehended you, I believe?

A. That's true.

Q. What did they do with you after your apprehension?

A. I was taken to the Los Angeles Office of the FBI and then rushed to a plane at the Glendale-Burbank Airport. I was transported by plane to Louisville, Kentucky, taken to the Starks Building and held in their detention room until the time I was brought into this court.

Q. How long were you held in the detention room of the FBI in the Starks Building at Louisville?

A. From the morning of May 12th until late afternoon of May 13, 1936.

Q. Were you permitted to see anyone?

A. I was not.

Q. Were you interrogated?

Testimony of Thomas H. Robinson, Jr.

A. I was interrogated from the time that I was arrested until the time I appeared in this court room in 1936.

Q. Were you brought into this court room right here?

A. It was this court room, I think, but I don't recall it.

Q. How many Agents questioned you from the time you were apprehended?

1147 A. Well they questioned me in relays. There were so many of them I don't know whether they were the same ones over and over or how many. I know it seems like to me there were a great many Agents.

Q. Did they ever relax their questioning of you from the time you were apprehended until the time you were brought into this court room.

A. They questioned me in relays, all day and all night.

Q. Did they allow your mother to see you?

A. They did not—not until the last few minutes before I came to arraignment.

Q. Did you see your father? Or, were you permitted to?

A. I saw him for a few minutes also.

Q. What was his condition?

A. He was very much intoxicated, at the time.

Q. What was the condition of your mother when you saw her?

A. She was hysterical.

Q. Were you allowed to procure any lawyer or counsel?

A. I had no lawyer or counsel, and wasn't allowed to procure any.

1148 Q. What did the FBI men say to you with reference—as to what plea you should enter when you were brought into court?

Mr. Brown: I would like him to identify the FBI Agents by name.

A. Mr. Connelley, I can identify him sitting right there, as one of them.

Q. What did he say to you?

A. He threatened me with the death penalty and told me to plead guilty.

Q. What other Agents advised to plead guilty?

Testimony of Thomas H. Robinson, Jr.

A. Orville C. Dewey who was then Special Agent in Charge of the Louisville Office.

Q. That was in 1936?

A. Yes.

Q. Do you recall any Agents who so advised you or suggested how you plead?

A. Mr. John Bugas who testified right here in this court. I don't seem to recall any of the other men's names at this time.

Q. Well were you allowed to sleep any from the time the FBI Agents apprehended you?

A. I didn't have any sleep from the time I was arrested at Glendale, California, until I hit the Atlanta
1149 Penitentiary.

Q. And how many hours was that?

A. That was about 2 days time.

Q. Forty-eight hours?

A. Yes, or a little more.

Q. How were you brought into this court room?

A. Shackled and handcuffed.

Q. What do you mean?

A. I mean that I had shackles on my legs and I had handcuffs on my hands and I was shackled to an Agent of the Department of Justice, which one I don't know.

Q. Did any lawyer represent you at that time?

A. I had no lawyer.

Q. At that time had you ever been legally restored to sanity?

A. I had not.

Q. Well, assuming that this is the court room in which you were brought, what time of the day was it?

A. It was around 6 o'clock at night.

Q. Judge Miller was not the judge at that time?

A. No, Judge Miller wasn't the judge. Judge Elwood Hamilton was sitting at that time.

Q. How many words did you say when you were brought into court on that occasion?

A. I said one word.

1150 Q. What was that word?

A. "Guilty".

Testimony of Thomas H. Robinson, Jr.

Q. What was done with you immediately after you said that one word?

A. I was immediately taken to the train and taken to the Atlanta Penitentiary.

Q. How long did you stay there?

A. I stayed at Atlanta 12 days.

Q. And from there where were you taken?

A. To Leavenworth Penitentiary.

Q. Where is that located?

A. Leavenworth, Kansas.

Q. And how long did you stay in that institution?

A. I stayed in Leavenworth approximately 10 months, and then I was transferred to Alcatraz Island.

Q. And how long did you stay on Alcatraz Island?

A. I stayed at Alcatraz Island for over six and a half years.

Q. And for the purpose of the record and the jury just what is Alcatraz Island?

A. I would say it is America's torture chamber.

Q. Were you disciplined while you were in Alcatraz and these other institutions?

1151 A. No, I never had occasion to violate any of the rules in any of the institutions. I had a 100% record at all three places.

Q. I mean did they have rules and regulations by which you were made to comply?

A. Yes.

Q. And were you—while you were at Alcatraz did you make application for a writ of habeas corpus?

A. After I was in Alcatraz for about 3 years I did make application in the San Francisco Federal Court for a writ of habeas corpus.

Q. Was that immediately granted?

A. No; that was denied and the case was taken to the Circuit Court of Appeals; and it was denied there with a dissenting opinion. It was appealed to the United States Supreme Court. The United States Supreme Court reversed the case to the United States Circuit Court of Appeals, and the Circuit Court of Appeals reversed the case with an enbank decision to the Federal District Court in

Testimony of Thomas H. Robinson, Jr.

San Francisco and when the case was heard there the United States District Judge for the San Francisco District Court ordered me released from Alcatraz.

Q. Upon what grounds were you released?

Mr. Brown: I think the record of the judgment speaks for itself on that.

1152 The Court: Yes. I do not think it is material in this case anyhow, is it?

Mr. Brown: I don't think it is, Your Honor.

Q. Following your being ordered to be released from Alcatraz, what happened then?

A. I was brought back here by the Marshal for a new trial.

Q. And when were you brought back here?

A. September 28th.

Q. What year?

A. 1943.

Q. And were you then brought before His Honor, Judge Miller, in this court room?

A. Yes.

Q. And what plea to this indictment did you make before him?

A. I entered a plea of not guilty with the advice of counsel.

Q. You had counsel on this time you pleaded but did not on the other occasion. Is that what you mean to say?

A. Yes.

Q. Now, with reference to any money, was any money brought to the apartment in Indianapolis?

A. Yes, there was a sum of \$50,000 brought to the apartment.

1153 Q. What did you do with it?

A. Before I left the apartment I kept half of it. I put it in my suitcase when I left and I left the other half with Mrs. Stoll as by our original agreement.

Q. Half of it?

A. What I took to be half. I didn't count it.

Q. Do you know it was half or are you just—what about that?

A. I wouldn't say that it was exactly \$25,000 but it

Testimony of Thomas H. Robinson, Jr.

was in the neighborhood of \$25,000.

Q. And who brought that money there?

A. My wife, Mrs. Frances Robinson—my wife at that time.

Q. And who was with Mrs. Alice Stoll at the time you last saw her?

A. My wife.

Q. And you departed that apartment on what date? In what year?

A. October 16, 1934.

1154 Q. I'll show you Defendant's Exhibits 1 through 13, inclusive, and ask you if these photographs and the views shown thereon truly and accurately represents the condition as portrayed in those photographs of and concerning Apartment No. 2 at 2735 North Meridian Street, Indianapolis, Indiana, as of October 10th through the 16th, 1934.

A. Yes, they are.

Q. No. 1 purports to show the court entrances of that apartment in question, does it?

Mr. Brown: Your Honor, haven't we been over all this with Mr. Johnson.

The Court: I thought there was no question between you all that these pictures were correct and it has been explained to the jury just what each one is.

Q. I will ask you to file these as part of your testimony.

Mr. Brown: I believe they are already in evidence.

The Court: Didn't Mr. Johnson file those?

Mr. Hogan: I don't think so, Your Honor.

The Court: They may be filed now if they have not been filed before.

(The said photographs are filed with the record as Defendant's Exhibits Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13, respectively.)

1155 Q. Now, I would like for you to take No. 8 exhibit and tell this jury what kind of cabinet that is shown in that photograph.

A. Why, I would say that that is a linen closet, was, in fact, a linen closet at that time.

Testimony of Thomas H. Robinson, Jr.

Q. And is the bath room door in a closed position shown in that view?

A. Yes, it is.

Q. Does that lock or catch that you describe show on that photograph?

A. That's the same type of lock that was on there at the time when we were in the apartment.

Q. Was there room enough in front of this cabinet for a person of Mrs. Stoll's stature and build to have stood in front of there out of range of anybody who might have had a gun on the other side of that door?

Mr. Brown: I am certainly going to object to that.

The Court: That's a conclusion on the part of the witness. He can tell what space was there, if he wants to.

Q. Suppose you tell what space was there as represented by the space occupied by the linen closet.

A. There was room enough for me behind the cabinet, so there must have been room enough for her.

1156 Mr. Brown: I am going to object to that last statement.

The Court: Objection sustained. That's a conclusion. He can tell how much space was there.

Q. How much space was there?

A. I don't know exactly. I would hazard a guess.

Mr. Brown: We don't want a guess.

Q. Your best recollection of what the width of that cabinet was.

A. I would say about twenty-two inches.

Q. I show you what purports to be a photograph of you taken in former years, or taken at a former time. Do you recognize that?

A. Well, yes, I recognize it as my own picture.

Q. About what year would you say that picture was taken?

A. I think that picture was taken in 1932.

Q. Had there been any material change in your facial appearance or appearance between 1931 and 1932?

Mr. Brown: I am going to object to that. That is certainly one thing a person can't tell, what he looks like.

The Court: He can tell what happened to him if he

Testimony of Thomas H. Robinson, Jr.

wants to, unless you have some comparison of pictures it would be hard for this witness to tell.

1157 Q. What has happened to you other than the toll of years has taken on you since 1932 or 1931?

A. Well, I would say seven years on Alcatraz doesn't improve your appearance any.

Q. Did you look about like this or did you look like this in the year 1931?

The Court: I thought that was taken in 1932, wasn't it?

Mr. Hogan: I asked him if he looked like this in 1931.

The Court: There was one year's difference.

Mr. Hogan: That's right.

Mr. Brown: How does this witness know what he looked like?

Mr. Hogan: I think he would.

The Court: Of course, you can look in a mirror and see what you look like.

Mr. Hogan: Sure you can.

The Court: The witness can give his opinion for what it is worth.

A. I think I looked approximately the same in 1931 as I looked there in 1932, very little difference.

Mr. Hogan: I will ask that this be filed as Defendant's Exhibit No. 16.

(The said photograph was handed to the reporter and filed with the record as Defendant's Exhibit No. 16.)

1158 The Court: Members of the jury, we will take a short recess at this time. Do not discuss the matter among yourselves or with anyone, or permit anyone to talk about it in your presence.

The Marshal will give us a short recess.

A short recess was taken, after which the hearing was resumed, as follows:

(Mr. Hogan continuing:)

Q. Now, with reference to the time that you and Mrs. Alice Stoll spent in this apartment, how did you spend the time passing the day?

Testimony of Thomas H. Robinson, Jr.

A. Why, we usually spent the time listening to the radio, as I stated before, and reading the papers, engaging in conversation.

Q. With reference to whether she was rebellious or otherwise, will you tell how she reacted toward that sojourn?

A. Well, I think I stated that she took it more or less as a joke up until the last day or so and she changed her mind.

Q. Did she enter into it with any spirit of rebellion?

A. No, she didn't.

Q. Did you and she do any beer drinking during those seven days?

A. A great deal of the time during that time.

1159 Q. Who would go get the beer?

A. I would.

Q. What brand would that be?

A. As I stated before, that was Patrick Henry brand of beer which I insisted on at that time.

Q. Did you get beer every day or just some days?

A. Every day, several times a day.

Q. Would you get beer at night?

A. Yes.

Q. And would you get other provisions to eat with it?

A. Yes. Sometimes I went to the stores and bought food and other times I would go to the delicatessen which was in the corner of the building of the apartment and buy prepared food.

Q. When you would be gone, what would you do with her?

A. During those first four days she had the free run of the apartment.

Q. Now, you mentioned that towards the last she became otherwise. Now tell the jury about her change in attitude.

A. Why, I think she, along the latter day or so, realized the seriousness of what we were into, and one time she threatened to walk out. I think that was possibly on the fifth or sixth day.

1160 Q. What caused her to change her mind, if you

Testimony of Thomas H. Robinson, Jr.

know?

A. Possibly it was all the publicity that the case was getting and the news flashes that came over the radio made quite a serious thing out of it, which it really was, of course.

Q. Did she ever at any one time or on occasion drink more than one bottle of beer?

A. She drank several bottles on several different occasions.

Q. How many, would you say?

A. Oh, over a period of time, one drinks beer gradually. I wouldn't know what to say. I would think three or four bottles over a period of time.

Q. After you were brought back to Louisville to stand trial in September of this year, I will ask you to tell the jury whether or not any medical or professional men at the instance of the court made an examination of you to determine your mental status as of this time.

A. Yes, four doctors appointed by this court examined me in the Jefferson County Jail, quite an extensive examination, physical, mental.

Q. And following that do you know whether or not any order was entered in this case—your case?

A. I heard Judge Miller read the findings of
1161 those four doctors to the effect that I am at the present time sane.

Q. Is that entered as an order in this case?

A. I am sure it is.

Mr. Hogan: You may ask him.

Mr. Brown: Your Honor, just for the purposes of the record, a number of my first questions I would like to have a ruling on out of the presence of the jury, and I want to go into some things quite extensively, and not to take any chance on the record I want to ask the questions and ask Your Honor to rule on them out of the presence of the jury. It pertains to 1929, 1934, and also 1926, and I would prefer to do it that way.

The Court: You want to ask them up here at the desk?

Mr. Brown: Yes.

The following proceedings were had at the Judge's desk and out of the hearing of the jury.

Proceedings

Mr. Brown: He testified he did not graduate from the Wallace Preparatory School because he was not able to complete a subject. I am going to ask if the reason he did not graduate, if he did not embezzle funds from the Wallace World of which he was business manager, the school paper of the Preparatory School. Now that's on the insanity, to show that it is the same laying on of some-
 1162 body else.

He testified that by reason of his marriage to Sue Anne Tubbs and his failure to find employment, it worked on his mind and he became insane. I am going to ask him if that insanity hearing don't come as a result of two robbery charges against him in Nashville, Tennessee, and didn't he enter both of those homes, pose as an officer of the law and remove from those homes jewelry to the value of \$9500.00.

Now then, I am going to ask him about, if in line with his purported intimacy with Mrs. Stoll, if immediately prior to this kidnapping in 1934 he didn't commit an offense against three young women, and if he at that time didn't tell the prosecuting attorney, "All right, produce them and let them testify, and I'll smear them."

Now I think that's admissible on two separate theories, one on the insanity theory and the other to show a pattern of crime, and there are some pretty good cases on that. Now, if Your Honor wants to look it up, I would rather adjourn now and look it up because my cross-examination is not going to be extended in any manner of means, if Your Honor has any doubt about it.

The Court: Of course, the usual rule is, you can't show offenses unless they were convictions for felonies. I don't know what exceptions there may be to that rule.

1163 Mr. Hogan: The old Dressler case held—

The Court: You can show former criminal offenses of the same pattern and same type which would bear on the intent, but I don't know that these are the same character—embezzlement.

Mr. Brown: Exactly. He entered two homes, purporting to be an officer, the Stoll homes purporting to be a telephone man, twice by women at those places. And then

Proceedings

when he is indicted they offer to pay it back and let him go to the asylum rather than the penitentiary. And then the 1934, I think that's admissible under the same theory and under still another theory. In those cases he picked up three young women, one he grabbed and put her in the car, he didn't pick her up, the other two cases he picked them up, he took them to the country, and in one case had attempted to have intercourse with her in an abnormal way, and another instance he took their jewelry away from them and they prosecuted him.

The Court: Unless you have got some cases that hold that way, I couldn't do it. Of course, if you have any authorities that say you can, I will listen to them.

Mr. Brown: All right.

The Court: The general thought would be that other crimes would not be admissible. I suppose we might
1164 as well adjourn for the day.

The following proceedings in the presence of the jury:

The Court: Members of the jury, there is a question which has come up between counsel that will probably take considerable time to be presented by counsel to the Court. Both sides want to be heard on it rather at length, and I think it will take us well beyond the usual adjournment time of 5:00 o'clock for us to hear and discuss this matter to our satisfaction. There is no reason, then, to keep the jury here waiting for us to get through when we won't get through until after the usual time of adjournment. We will adjourn accordingly, so far as the jury is concerned, and I will meet counsel in chambers and continue with the matter that you have presented to me.

During this overnight recess then, do not discuss this matter among yourselves, do not talk about it, the evidence is not all in yet, do not make up your mind on this case one way or the other until the case is through and it is ready to be submitted to you in its entirety. Do not let anyone discuss it with you or in your presence. Avoid contact with anybody that might be interested in the results of this case.

We will recess, then, until 9:30 tomorrow morning.

Testimony of Thomas H. Robinson, Jr.

A recess was then taken to 9:30 a.m. Tuesday, December 7th, 1943.

1165 Met pursuant to adjournment on Tuesday morning, at 9:30, December 7, 1943, and continued with the further proceedings as follows:

Cross-examination by Mr. Brown.

Q. Now, Mr. Robinson, on the stand yesterday you stated that you felt that the beginning of your mental collapse was the so-called forced marriage you went through in 1927. Am I correct in that statement?

A. That is correct.

Q. Now you were married, were you not, on January 18, 1927 for the first time?

A. Well I don't recall the exact date.

Q. Is that the approximate date?

A. Approximately, yes.

Q. And you testified that that caused you to be ostracized, not by the fellows or the young men, but by girls in Nashville?

A. Why yes, the girls that I had been formerly going with—not so much the young men but if it was a mixed crowd, naturally I was not along.

Q. You felt, and you had the feeling that the responsible citizens of Nashville did not want you, a married man, going around with their unmarried daughters.

1166 Is that the feeling you had?

A. Well the scandal attached to the forced marriage—yes, I think that was it.

Q. And you also said it caused you to leave the law school quickly thereafter?

A. Well after a short time. I think I stayed in the law school for nearly a year thereafter.

Q. And it caused your grades to fall off?

A. I do not recall that I said my grades in law school began to fall off.

Q. Now didn't you say that you left the Vanderbilt law school within a period of six months after this marriage?

A. Well I was only giving the time approximately. I

Testimony of Thomas H. Robinson, Jr.

am not sure myself just what the period of time was—I couldn't say.

Q. On reflection I will ask you if you did not continue in the Vanderbilt Law School until November 5, 1928, almost two years after this so-called forced marriage?

A. I am sure it was around November in 1928 when I left the law school but as to the date of this marriage, and the final annulment of the marriage, I don't recall the dates on that, no sir.

Q. For the purpose of refreshing your recollection as to the date of that marriage, I will show you a certified copy of your marriage certificate and see if that refreshes your recollection. Now you have carefully refrained from mentioning this young lady's name and I do not intend to mention her name also.

A. (Reading the certified copy of certificate) That is correct.

Q. If that refreshes your recollection, I will ask you to examine that and tell the jury whether that isn't a true copy of your marriage certificate?

A. I accept it as a true copy.

Q. Yes. Well, does it refresh your recollection as to the date of your marriage?

A. It does not refresh my recollection, but I accept that date as being true because I don't really know.

Q. What is that date?

A. January 18, 1927.

Mr. Brown: I would like to file this as Government's Exhibit No. 77.

(The above described document was handed to the Reporter, marked Government Exhibit No. 77, and filed with the Record.)

Q. Now then I will ask you also if, after this so-called forced marriage your grades did not go upward rather than downward in the Vanderbilt law school?

1168 A. Well I think that after that marriage I made a decided effort to overcome it and I think at the time I did probably apply myself to my studies a little harder in an effort to overcome the disgrace of this mar-

Testimony of Thomas H. Robinson, Jr.

riage at the time. What it had done to me mentally—that is possible, yes, sir.

Q. I will ask you if as a matter of fact, for two full semesters after this marriage you didn't get the following grades: Criminal Law—90. Is that correct.

A. I don't recall the grades. I know that I maintained a high average-through law school.

Q. And the final grade, criminal law—90; property—94; real property—80; agency—72; contracts—72; torts—82; equity jurisdiction—90; domestic relations—80; damages—91; partnership—85; bills and notes—82 at one semester and 82 at another semester; final grade 86; federal jurisdiction—83. Were they approximately your grades that you received after this marriage?

A. Well, I would say that they are.

Q. Now, you testified at length to this insanity. How did it affect you, Mr. Robinson. Was it a veil over your mind that you were not able to dispose of?

A. Well that is a difficult thing to describe.

Q. Well describe it as well as you can with you
1169 please?

A. I think I have already described it to the best of my ability.

Q. You have described it in your direct testimony. Now when did this veil if I can call it a veil or the matter that you described in your direct testimony, when did it lift?

A. Well I did not say that there was any veil or that it was lifted at any certain period. I could not go into that because I don't know. I am not qualified to say that.

Q. You are not qualified to say you are sane or insane?

A. At the present time you mean?

Q. Any time?

A. I think I was at that time.

Q. You think you were at that time. Now when is "that time"?

A. Well from the time that I was adjudicated until several years thereafter.

Q. All right. How many years?

A. I don't know. I couldn't say.

Testimony of Thomas H. Robinson, Jr.

Q. Well just give us your best judgment Mr. Robinson?

A. Well I think I was of unsound mental condition for several months or possibly years after I was in the penitentiary.

Q. All right, give us the date—your best judgment?

A. I could not give you any one date at which I recovered my sanity?

Q. Well give your best judgment? Give it over a period of time? When did you feel that if before that time you had been suffering from mental illness, when did you begin to realize that you were no longer suffering from a mental illness?

A. The first part of the time, I think, it was possibly the time I was in Alcatraz. I know that in the first three years that I was there I was not able to adjust myself or get my mind on what I was doing. I was bewildered and I was confused at the time, and it was only after I had been at Alcatraz for a period of three years I was ever able to stimulate my thoughts along normal channels.

Q. Do you mean in 1940?

A. Well offhand I would say that.

Q. Well offhand or any way you want to put it, what would you say, 1940?

A. Yes, I would say 1940.

Q. Now as a matter of fact, while you were at Alcatraz didn't you on many occasions go through an act about insanity? Didn't you pretend to be insane when the guards or any officials of the penitentiary were around; when you would hear them coming wouldn't you run to a corner and begin to talk to yourself?

A. That is ridiculous; I did not.

Q. And didn't you, when they left and when you were there with the normal employees of the institution or with the inmates, didn't you return to perfectly normal conduct?

A. There was no such conduct on my part in Alcatraz. If it had there would have been some indications of it by the doctors or by some discipline on the rules from the Deputy Warden probably.

Testimony of Thomas H. Robinson, Jr.

Q. Now let's return to this adjudication that you have talked about. Now, I believe you testified that you were employed by the Wayne Lumber Company in the spring of 1929, and that it was sometime in June of 1929 that this lunacy hearing was held and you were adjudged a lunatic and sent to the Central State Hospital. Now, am I correct in making that statement?

A. Well I think it was in the fall of 1928 when I was employed by the Wayne Lumber Company.

Q. Now then that you were out of a job immediately prior to the time that you were adjudicated insane?

1172 A. Yes, that is correct.

Q. Now as a matter of fact, didn't you work for the Wayne Lumber Company from January 1929 to June 1929?

A. I did not; that is a mistake.

Q. Now then on January 1, 1929, you married Frances Althausen?

A. Yes, sir, that is correct.

Q. Now when was the child born as a result of that marriage?

A. It was August 31, 1929, when I was in the insane asylum.

Q. Again not a nine months child? Was it a 9 months child?

A. I could not say offhand on that.

Q. Well rapid calculation on your fingers would answer that, wouldn't it?

The Court: When were you married?

Mr. Brown: January 9, 1929. The child was born August 31, 1929.

A. I think the child was somewhat premature.

Q. It was premature in that case. Now as a matter of fact, Mr. Robinson, wasn't this adjudication of insanity a device on the part of yourself and your father and your family—

1173 Mr. Hogan (Interrupting): Now that is objected to. That is a direct attack upon the records of the court itself.

Mr. Brown: It is not.

Testimony of Thomas H. Robinson, Jr.

The Court: No, I don't think it is an attack. The record stands but it can show any reason that might be behind it.

Q. Wasn't that a device upon the part of yourself and your father and your family to escape criminal prosecution for the robbery of the home of Mrs. C. C. Wagner and Mrs. Mary G. Lamb?

Mr. Hogan: I object to that, if Your Honor please.

The Court: Members of the Jury, the question refers to a possible commission of another offense by this defendant.

Ordinarily evidence of another offense at a prior time is not competent for a jury to consider because the fact that a man may have committed another offense is not evidence that he committed the offense charged. But in certain instances there are exceptions to that rule, and where collateral issues come into play and are before the jury for decision, such evidence may be considered on collateral issues.

Now, the question was asked, and will be permitted to be asked and to be considered by you, and **1174** the answer thereto, with reference to this collateral issue as to any possible motive for the insanity proceedings; and it will be considered by you exclusively on that point, and it will not be received in evidence on any other point; but I will let it be admitted as bearing on that question which was directed to the witness.

Mr. Hogan: Your Honor, I think I should state the basis of my objection. My objection is based upon the ground that it is improper to prove the commission of any prior crime other than the one for which he is on trial.

The Court: The rule which you state is the generally accepted rule which I have just told the jury about and I repeat, there are exceptions to that where that evidence can be introduced bearing on a collateral issue that is before the jury and it will be considered solely as bearing on the question as directed to the witness.

Mr. Hogan: Exception.

Q. Now, I will ask you, Mr. Robinson, if in March, 1929, you went to the home of Mrs. Mary G. Lamb, at that

Testimony of Thomas H. Robinson, Jr.

time residing at 2413 Jones Avenue in Nashville, Tennessee; that you called at her residence; that you were met at the door by her maid; that you exhibited a badge to the maid, stating that you desired to see Mrs. Lamb; that you
 1175 told Mrs. Lamb that you were a deputy sheriff; that you informed Mrs. Lamb that you wanted to search the house for illegal liquor; that Mrs. Lamb protested your action and desired to call her husband on the telephone; that you denied this request of Mrs. Lamb; and that Mrs. Lamb and her maid were compelled to be seated in the front room while you proceeded with your search; that at the time you entered that house you had a gun in your belt; that you searched the home of Mrs. Lamb, particularly the bed room; that during the time of the search the telephone rang on two separate occasions; that you did not permit Mrs. Lamb to go to the telephone but you instructed the maid to answer and tell the person calling that Mrs. Lamb was too busy to talk; that you on that occasion made a thorough search of the residence; that you did not make a thorough search of the residence but confined your search to the bed room; that upon completing the search you demanded to Mrs. Lamb to know where her car was parked that you demanded of her her keys; and that you ordered Mrs. Lamb and her maid to go to the attic; that you drove away in that car and you took with you the majority of the jewels of Mrs. Lamb and her mother, Mrs. Elmo Love Gee. Is that correct?

A. That is correct in most details. I did not have a gun on my belt and that I went into the house to
 1176 obtain whiskey—

The Court (Interrupting): Is that correct or incorrect?

Witness: I said it was correct in most details except for the gun and that I went into the house for any whiskey that I thought was in there or that was the primary object in going in.

Q. And that thereafter you and your father, Thomas H. Robinson, Sr., requested Mr. Elmo Love Gee, husband of the woman whose jewelry you took and the father of Mrs. Lamb, not to prosecute on those charges, that full

Testimony of Thomas H. Robinson, Jr.

restitution would be made—

Mr. Hogan (Interrupting): Now that is objected to on the basis of what his father might have done.

Mr. Bro n: Well I am asking him if he knows.

The Court: It is just directed to what he knows.

A. I do not recall any statement my father made to Mr. Gee—no.

Q. Were you a Deputy Sheriff at that time?

A. No, I wasn't.

Q. And I will further ask you if that in March in 1929 that you did go to the home of Mrs. Nellie White Wagner at that time residing on Woodlawn Drive, in the City of Nashville, Tennessee; that you represented yourself
1177 to Mrs. Wagner again to be a Deputy Sheriff; that you exhibited to Mrs. Wagner a fake search warrant; that you told Mrs. Wagner that you were going to search the house for whiskey and that Mrs. Wagner objected; whereupon you seized her forcibly as she was attempting to call her husband over the telephone; that then you locked Mrs. Wagner and her maid in a room; that you searched her house and stole jewelry to the value of several thousand dollars; that while you were searching the house the telephone rang; that you did not permit Mrs. Wagner to answer the telephone but instructed the maid to do so; and that you told the maid to inform the person calling that Mrs. Wagner was too busy to answer the telephone; that at the time you were Mrs. Wagner's home that you demanded to know of Mrs. Wagner concerning certain wires about the premises; and that you were told that one wire led to the servant's telephone; and that the other was an electric wire to the garage. Didn't that happen?

A. There was nothing said about any wires.

Q. Oh, then the only thing that didn't happen—

A. (Interrupting) Everything else is substantially correct, that's true. But nothing was said about any wires or any telephone or anything else.

Q. Now then I will ask you if some months later to-wit, June 1929, you were not identified by Mrs.
1178 Wagner and Mrs. Lamb as the person who had perpetrated the crime in their homes and, as a result

Testimony of Thomas H. Robinson, Jr.

of the arrest and indictment, that you, together with members of your family, didn't cook up this insanity scheme to avoid going to the penitentiary?

A. That is not true.

Mr. Hogan: That is objected to.

The Court: The objection on the same ground as before, and the jury will be told again that this evidence is received on the collateral issue which is involved in this case, and not as evidence that he committed the particular crime with which he is charged here; but it can be considered by the jury on the collateral issue which has been raised by the defendant's testimony.

Mr. Hogan: Exception.

Q. I will ask you if in May, 1929, you were not indicted by the Grand Jury of Davidson County, Tennessee, charging, in legal language, the offense that you have heretofore testified about.

A. That's correct.

Q. And if it wasn't after that for the first time that you had this lunacy inquest that you testified about yesterday.

A. Yes, it was subsequent to the offense charged 1179 in that indictment.

Q. The lunacy inquest was.

A. Yes.

The Court: The jury will keep in mind that the evidence as to that indictment is limited to the same issue that I indicated before, not to the main issue as to whether or not this defendant is guilty of the offense charged in this case.

Q. Now then, is it not true that an indictment was returned against you involving, in legal language, the offense that you have testified about that was committed by you at the home of Mrs. Lamb, and wasn't that also prior to the time of the lunacy hearing in the Criminal Division of the Davidson Circuit Court?

A. I thought that was in the same indictment. I may be mistaken.

Q. Well, it was prior.

The Court: The same instructions to the jury on that

Testimony of Thomas H. Robinson, Jr.

question.

Q. Now then, I will ask you if as a result of these indictments and as a result of the lunacy inquest, you were not committed to the criminal ward of the Central State Hospital.

A. That is correct.

Q. You were not very well pleased there, were you?

1180 A. Why, it wasn't a question of whether I was. My family wasn't. I wasn't getting the proper kind of treatment there.

Q. And you desired to be removed from the criminal ward of Central State Hospital to another ward, did you not?

A. No. I think I wanted to—at least, my father wanted for me to get some fresh air and sunshine and the proper treatment that was indicated for the type of insanity that I had.

Q. Now then, I will ask you—you have testified that there was a second lunacy hearing in the spring of 1930 following which you were transferred to the Western State Hospital at Bolivar, Tennessee.

A. That is correct.

Q. Now, as a matter of fact, Mr. Robinson, weren't the criminal charges nolle prossed against you on the 9th day of May, 1930, and it was a result of that nolle pross that you could no longer be held in the criminal ward, but as a result of that you could demand to be transferred to the Western State Hospital at Bolivar.

Mr. Hogan: Now, he wouldn't know about that.

Mr. Brown: Well, if he does know.

A. Well, the only thing that I recall about that is that the State of Tennessee agreed to nolle pross the criminal charges so that I could receive the proper treatment in another institution, which included fresh
1181 air, sunshine, and exercise, which I wasn't getting in the Central State Hospital.

Q. But you were transferred to the Western State Hospital at Bolivar.

A. I was.

Testimony of Thomas H. Robinson, Jr.

Q. I'll hand you a letter dated July 1st, 1936, and ask you if you wrote that letter and if that is your signature, and if everything on that letter isn't yours with the exception of the red underscoring which has been added apparently later.

Mr. Hogan: May I see it?

Mr. Brown: Yes, let him identify it. If he doesn't identify it, it won't be used.

A. Why yes, I wrote that letter to Mr. Bates.

(At this point the letter was handed to Mr. Hogan for examination.)

Mr. Hogan: Your Honor, I object to this letter because it is in the nature of a confession or admission, and it is certainly objectionable because he was insane and had been adjudicated insane and had never been restored, and an insane person cannot legally make any statement that is against his interest.

The Court: That's one of the questions in this case, isn't it?

1182 Mr. Hogan: And it has not been brought out as to whether or not any promises were made to him, or if there were, what they were, or whether there were not.

The Court: I imagine the District Attorney will qualify the letter before it is introduced. He will have to, of course. I imagine if it is in the nature you say it is, I haven't read it, I don't know, but it seems to bear, at least, on the issue we have as to whether or not this defendant was sane or insane at that time. For the present I will admit it on that issue. Later it may be admissible on other issues, but it will be limited for the present, at least, along the discussion that we have had on other questions bearing on the issue of the defendant's sanity.

Q. You wrote this letter to Mr. Bates yourself.

A. I did, at the suggestion of the Warden of Leavenworth Penitentiary.

Mr. Brown: I would like to read this letter to the jury: "July 1st, 1936. Dear Mr. Bates."

Mr. Hogan: He hasn't yet qualified it, as to whether or not—

Testimony of Thomas H. Robinson, Jr.

The Court: All right. Ask him further questions, Mr. Brown.

Q. Mr. Robinson, didn't you communicate with Mr. Bates without any solicitation from Mr. Bates, and if Mr. Bates at that time wasn't the Director of the Bureau
 1183 of Prisons, and I will ask you further if you didn't communicate with him of your own free will and accord, attempting to gain the privileges and concessions outlined in this letter.

A. That letter, as I stated before, was written at the suggestion of Warden Zerbst at Leavenworth Penitentiary and the prison psychiatrist who at that time—I don't recall his name—he was the psychiatrist at Leavenworth.

Q. Dr. Singleton?

A. If I may be permitted to explain the circumstances surrounding that, I would be glad to.

Mr. Brown: I submit it is certainly competent.

Mr. Hogan: Now wait a minute. Let's see here. He said it was written at the suggestion of Warden Zerbst.

The Court: You were not required to write it, forced or made to write it, were you?

The Witness: I wasn't physically forced, Your Honor, but there were some inducements held out to me.

The Court: What inducements?

The Witness: I was at that time held in what is known as isolation in the Leavenworth Penitentiary, and Warden Zerbst called me in his office and told me that as long as there was a question as to my insanity he couldn't take me out of isolation and give me a job in the regular run of the penitentiary, and he suggested that I write to the

Director of the Federal Bureau of Prisons at Wash-
 1184 ington, who was then Mr. Bates, and explain to him—explain away this insanity angle in my case, and I did that and did everything in my power to convince Mr. Bates that I wasn't insane. Naturally, I wanted to overcome that stigma of insanity myself, it had always been a thing of disgrace to me and I wasn't—

The Court: Well, at that time you did it because you wanted to do it, didn't you?

The Witness: Yes, I wanted to get out of isolation

Testimony of Thomas H. Robinson, Jr.

and go to work in the penitentiary like the rest of them did.

Mr. Brown: I submit the letter is competent.

Mr. Hogan: Could you have gotten out of isolation if you hadn't written that letter?

The Witness: Warden Zerbst stated that as long as there was any issue—

The Court: Now just a minute. We are getting into hearsay again, what Warden Zerbst said.

Mr. Hogan: It is certainly bearing on the issue—

The Court: I don't care what it is bearing on. It is hearsay. We have been keeping hearsay out.

Mr. Hogan: Well, if Your Honor please—

The Court: All through the trial of this case, Mr. Hogan, you have objected every time the Govern-
 1185 ment tried to get in hearsay testimony.

Mr. Hogan: I certainly did.

The Court: And the rule has been applied at your instance, and it is going to be applied in this instance, too. Hearsay, if it is inadmissible on the Government's part, it is inadmissible on your part.

Mr. Hogan: I think what we should do then, is not to have this evidence before the jury and let's have the question of the—

The Court: I can't hear hearsay evidence any more than the jury can hear it.

Mr. Hogan: No, but I mean as to whether this letter was written voluntarily or with some hope or promise of reward or immunity, because that bears directly upon whether a statement of any kind—

The Court: I think the witness has testified that he wrote it because he wanted to change his condition. You were not promised any monetary reward of any kind, were you?

The Witness: No, but I was promised this, that the prison psychiatrist, who as he said was Dr. Singleton, at that time told me that as long as there was any question as to my insanity I would never make parole.

The Court: You were doing it to clear up the question of your sanity, weren't you?

Testimony of Thomas H. Robinson, Jr.

1186 The Witness: Well, I was attempting to show that I wasn't insane because I wanted to make parole, and I also wanted to get out and go to work.

Mr. Hogan: If Your Honor please, I suggest that that's the hope they held out to him.

The Court: Objection overruled.

Mr. Hogan: Exception, please.

The Court: I am telling the jury that I am admitting it at the present time as bearing on the defendant's sanity or insanity, not to be considered at the present time on any other issue.

Mr. Brown (Reading):

"Leavenworth, Kansas, July 1st, 1936.

Dear Mr. Bates:

Up until now I was not familiar with the fact that letters to your office should be sealed. I have previously written both your office and the Attorney-General's office in the hope that you would review my case and find circumstances therein that would justify you in allowing me to remain in an institution nearer home rather than be sent to Alcatraz. Mr. Bates, I have only one thought in mind for a year or more, namely, if I were apprehended that I would offer no resistance, that I would go back and take my sentence like a man, do my best to merit clemency at sometime or other,

1187 maintain the new hold I have on life and be able some day to start again all over with the girl whom I love and whose actions since my apprehension should convince anyone that she loves me dearly.

I have worked for various companies since I was fourteen years of age. This is my first conviction, and I have never associated with the underworld in any sense of the word. I understand that you are deeply interested in reform movements, and sincerely so, I am sure. I have this in mind. I am finished altogether with crime of any kind. The methods the Department of Justice used in my apprehension convinces me that it is impossible to beat the law. Figures will

Testimony of Thomas H. Robinson, Jr.

hear out the fact that crime does not pay.

Mr. Bates, among my effects in Glendale, California, was a manuscript of a book I was writing previous to my crime. It was, 'The Getting of a Job, a Science.' I have studied that problem carefully and am well informed on it. I would like to do this. Establish a placement bureau or at least teach a class here in the ways and means of getting a job. I believe I could help direct an inmate's efforts, once he is released, along certain well defined lines that would help him get a job. Most men are at a loss as to how proceed to get employment. I believe such a plan would succeed somewhat to cut down the number of parolees who resort to crime again because of lack of employment.

1188

I would appreciate this or some similar opportunity to get into some constructive employment. I give my solemn promise that I will not abuse any privileges extended me.

For your information, I would like to state this, that I am not a mental case, I have no psychosis, and that former decree of insanity was the result of my father imposing on his friendships. Also, I did not pose as a woman except on an occasion in Nashville as a disguise. I have no abnormal or homosexual tendencies, and am perfectly normal in that respect.

I am very grateful for the opportunity I had of again seeing my mother and the girl I previously mentioned. Mr. Bates, she means everything to me. She has done more to help my return to normal living and thinking than anyone else. She is working in my behalf now, and it is to her that I will go to if and when I am released.

I am conscious of the fact that I am requesting a lot, but I would like and so would she to have her name put on my correspondence list so that we may write one another and that she may visit me. I am to be immediately divorced from my present wife as we have long since ceased to mean anything to each other. My whole peace and happiness lies with this

1189

Testimony of Thomas H. Robinson, Jr.

girl. This request to see her and to write her is unusual and must be referred to you, but so also are the circumstances in respect to her. May I have an expression from you?

Yours sincerely,

Thomas H. Robinson, Jr."

Q. Now, the girl to whom you were referring was the woman that has been previously testified to and identified in this direct testimony as Jean Breese, is it not?

A. That is correct.

Mr. Brown: I would like to introduce this as Government Exhibit No. 78.

(The letter referred to was handed to the reporter and filed with the record as Government Exhibit No. 78.)

Q. Now, Mr. Robinson, after your release from the Western State Hospital at Bolivar, Tennessee, I will ask you if you were not employed for a period of eleven days by the Serval, Incorporated, and ask you if you were not employed from May 19th, 1931, to June 1st, 1931.

A. I have received that information also, but it was a mistake. I only worked there for one day.

Q. Now then, you were employed, as you testified, at the Stoll Oil Company here in the City of Louisville.

A. That's correct.

Q. Was that employment approximately from
1190 June 1st, 1931, to July 15th, 1931, but as a matter of fact you left on July 10th, 1931?

A. I am not positive as to those dates. I know it was June and parts of July. I couldn't say for sure.

Q. Now then, I will ask you if immediately thereafter you were not employed by the Mutual Life Insurance Company, as a collector, from July 11th, 1931, to September 12th, 1931.

A. I think those dates are correct.

Q. And at that time I will ask you if you did not reside at 175 N. Keats Street, here in the city of Louisville.

Testimony of Thomas H. Robinson, Jr.

A. Keats Street?

Q. K-e-a-t-s Street—Keats Avenue.

A. Yes. If that is in Crescent Hill, I think that was probably where I resided.

Q. Now, I'll show you a blank on the Meffert Equipment Company, signed "Thomas H. Robinson, Jr.," dated July 8th, 1931, and ask you to examine that and tell the jury whether that doesn't cover the purchase of the Corona typewriter.

A. Yes. That's my signature, I believe, that must be correct.

Mr. Brown: I would like to introduce this into evidence as Government Exhibit No. 79.

(The order blank referred to was handed to the reporter and filed as Government Exhibit No. 79.)

1191 The Court: What is the date of that?

Mr. Brown: July 8th, 1931.

The Court: Did you buy a typewriter at that time, Robinson?

The Witness: Yes, sir.

The Court: From the Meffert Equipment Company?

The Witness: Yes, sir.

The Court: What kind was it?

The Witness: I am sure it was a Corona.

The Court: Corona portable?

The Witness: Yes, sir.

Q. Pica type, style and number V5A05229 according to that.

A. Well, I wouldn't recall.

Q. I mean according to that statement.

The Court: Is that the same typewriter that was in the apartment on Meridian Street when you left there?

The Witness: Yes, sir.

The Court: Is that the typewriter you used in writing the note?

The Witness: Yes, sir.

The Court: I was referring to the ransom note.

The Witness: Yes, sir, that's correct.

Q. Now then, Mr. Robinson, I will ask you if imme-

Testimony of Thomas H. Robinson, Jr.

diately after your employment with the Mutual Life Insurance Company, you did not return to Nashville, Tennessee, and get a job soliciting with the Andrew Jackson University, Nashville, Tennessee, which was a business school, that you solicited for that school, you received your first commission check dated August 25th, 1932, and that you remained in that to October 22nd, 1932. Are those dates approximately correct?

A. I think they are, yes.

Q. Now then, I will ask you if immediately thereafter, for a period of at least two months, you were not employed by the A. B. C. Corporation, Winettka, Illinois, selling oil burners.

A. That's correct.

Q. That you left that employ of your own volition.

A. I did.

Q. That then, immediately thereafter, with the interval of a few days, you were not employed as maintenance man in the Mar-Main Arms Apartment, South Bend, Indiana, and that your wife was employed as housekeeper and telephone operator, and this employment did not last from January 1st, 1933 to April 1st, 1933.

A. That is correct.

Q. After you left the employ of the Mar-Main Arms Apartment, did you remain in Chicago or return to your home in Nashville?

A. The Mar-Main Arms was in South Bend.

1193 Q. I mean South Bend, and return to your home in Nashville.

A. I went to Chicago from South Bend.

Q. Did you work at any place in Chicago?

A. No.

Q. During the period of April 1st, 1933, up until August 27th, 1933, when you took an examination with the Tennessee Valley Authority?

A. I am sure I had no employment in Chicago during that period.

Q. Now then, Mr. Robinson, on August 27th, 1933, I will ask you if you did not file an application from and took an examination for a position with the Tennessee Val-

Testimony of Thomas H. Robinson, Jr.

ley Authority, the headquarters of which were in Knoxville, Tennessee.

A. I did.

Q. Now, in connection with that employment, I will ask you if it wasn't necessary and you did submit to the Tennessee Valley Authority, letters of recommendation.

A. Yes, I did.

Q. I will ask you further, Mr. Robinson, in response to your question yesterday by your counsel that someone told you or you fancied that Mr. C. C. Stoll was giving you a bad name, that you did solicit and receive from Mr. C. C. Stoll a letter of recommendation addressed to the Tennessee Valley Authority.

1194 A. Yes, I had—wait just a moment, I had a letter addressed to me personally. The letter wasn't addressed to the Tennessee Valley Authority that I know of.

Q. Well, let's examine this letter and see about that. (File handed the witness for examination.)

A. Well, it is possible. I never have seen that letter previous to this, but I am sure it is all right.

Q. You solicited a letter of recommendation to the Tennessee Valley Authority from Mr. C. C. Stoll, did you not?

A. I don't recall it if I did. Possibly I did. I think I gave his name as reference when I made out the application to the Tennessee Valley Authority.

Q. Is that letterhead written on any particular firm stationery?

A. This letter is written on the stationery of the Stoll Refining Company.

Q. Whom is it signed by?

A. Signed by Mr. C. C. Stoll.

Q. About what person is that letter?

A. It is concerning a recommendation for myself.

Q. Examine that letter carefully and find out whether Mr. Stoll implies or says anything in that letter detrimental to you?

A. No, he does not. He gives me a good recommendation.

1195 Mr. Brown: I would like to read that letter:

Testimony of Thomas H. Robinson, Jr.

"Mr. L. C. Richey, Director
Tennessee Valley Authority.
Knoxville, Tennessee.

October 21, 1933

Dear Sir:

Replying to your letter of the 19th inst. concerning Thomas Henry Robinson, Jr. for a position.

I have known him for a brief period, probably two months. Having known his father many years ago in Nashville, Tennessee, he was brought to my office about two years ago for a position with our company and was employed in our service station department at one of our service stations. We found him attentive, willing and honest. He, however, was offered a position which was more promising and left us after this brief spell. Naturally, my ability to help you is rather limited.

He has a striking personality, impressed me as being intelligent, keen and willing, I think, to work hard to make a success of anything he undertakes. This general statement I think covers as much as I am able to say in his case.

Yours truly,

C. C. Stoll."

Q. You took that examination, did you not?

A. I did.

1196 Q. The examination was divided into three parts, was it not?

A. I don't recall the extent of the examination.

Q. I will ask you if you didn't receive a very high grade on that examination.

A. I was later informed that I made 91 on it, I think, or 90.

Q. I will ask you if the examination was not divided into three sections, that on the first section, "Mechanical Aptitude," you obtained a grade of 95; that on the second section, designated "Non-language Test," you received a grade of 91; and on the third section, "General Ability Test," you received a grade of 100; and that your average

Testimony of Thomas H. Robinson, Jr.

grade for the three sections was 91 per cent.

A. I don't recall those grades. I never have received any confirmation of that other than what my father told me.

The Court: Mr. Robinson, did you get a letter from Mr. C. C. Stoll, yourself, in addition to the one which Mr. Brown has referred to?

The Witness: Previously I had asked Mr. Stoll for a letter of recommendation myself, personally, and I kept that on file.

The Court: That was addressed to you personally and reached you personally?

1197 The Witness: Yes, sir.

The Court: Was it a favorable letter?

The Witness: Yes, it was.

Q. Now, directing our attention to the early part of 1934, what time did you leave Nashville in the early part of 1934?

A. Why, in the early part of 1934 I was employed at Nashville by Du Pont.

Q. At their plant at Old Hickory, Tennessee?

A. That's right.

Q. At that time, was your immediate superior John Ward?

A. That's correct.

Q. Is that the same man whose name you assumed in various places thereafter?

A. It was, but why I did it I don't know.

Q. You registered at the Tyler Hotel on two different occasions under that name?

A. I think I did.

Q. And I believe you obtained that car from Mr. Saunders under that name?

A. I think that's right.

Q. Why did you do that?

A. I couldn't tell you. I don't know.

Q. Have no idea?

1198 A. No idea at all.

Q. Immediately prior to this kidnapping, for a period of a month and a half or two months, you began to

Testimony of Thomas H. Robinson, Jr.

assume other persons' identity?

A. I didn't understand that.

Q. Well, you lived at Mr. Leach's home in Chicago from June to August 18th, you and your wife, did you not?

A. 1934?

Q. Yes.

A. Yes.

Q. And you worked at the Forsythe Building during 1934, did you not?

A. In my right name, though.

Q. In your right name.

A. At the Forsythe Building, yes.

Q. And at Mr. Leach's home you used your right name.

A. In Oak Park?

Q. Yes.

A. Yes, I think I did.

Q. Now then, in August of 1934, you began to change your name, did you not?

A. I think I changed my name when I moved to Magnolia Avenue in Chicago.

Q. What name did you use there?

A. I don't recall that.

1199 Q. You mean you have had so many changes of names you can't recall any of them?

A. No, I just don't recall that one name. I know it wasn't my name, but I can't recall it at the present moment.

The Court: What was that date? You asked him one date and he didn't give a direct answer.

Q. In August of 1934 is when you moved to the apartment on Magnolia Avenue?

A. I think that's correct.

Q. Mr. Marion Hill, the assistant manager was here, and he testified he was the assistant manager of that apartment.

A. Yes, I recognized Mr. Hill.

Q. Didn't you use the name of John Ward there?

A. It is possible.

Q. You have no independent recollection of that?

A. No, I don't.

Testimony of Thomas H. Robinson, Jr.

Q. There, for the first time, you changed your name, isn't that right?

A. I think that's right.

Q. Why?

A. I couldn't say. I don't know.

Q. At this time you can't recall any reason to give the jury why, in August of 1934, a month and a half
1200 prior to this kidnapping, you began to change your names?

A. Well, at that time I know I was seeking employment all over Chicago, and it was at that period that I began to feel that Mr. Stoll was giving me a bad recommendation, although I had his letter of reference with me that I would show employers, they checked up, and I felt that Mr. Stoll was giving me a bad recommendation. It looks like every place I went it was Mr. Stoll, he was here blocking me on this job, blocking me on that job. I felt, I don't know, just the same as if I were pursued by him.

Q. That's when the mists began to descend on your mind?

A. Oh, I don't know anything about any mists descending on my mind, no.

Q. You didn't seem to be as clear minded as you had been before?

A. I don't recall. I couldn't say.

Q. Now, relative to your mental state in 1933, what was your mental state then with reference to 1934?

The Court: You mean a comparison?

Mr. Brown: Yes.

A. It is hard for me to say. I couldn't say what difference existed in my mind between 1933 and 1934. It all seemed like a nightmare to me, 1933 and 1934.

Q. How about 1932, the same nightmare?

1201 A. I don't know.

Q. Compare, for the benefit of the jury, your mental feelings toward Mr. Stoll or anyone else in 1934 with any other year you want to pick out. Say 1930.

A. Well, I didn't know Mr. Stoll in 1930.

Q. Well, say 1931?

A. Well, I don't think I entertained any ideas about

Testimony of Thomas H. Robinson, Jr.

Mr. Stoll when I was working for him in 1931. I think we got along very well.

Q. Any ideas on any subject? You described in 1934 how this change came over your mind, manifesting itself in changing your identity or concealing your identity under another name. Now I want you, for the benefit of the jury, to tell the jury what changes occurred in 1934 that were not present in 1931, 1932, 1933, 1935, 1936, 1937, 1938, 1939, 1940, 1941, 1942 and 1943, up to date.

A. I am not able to diagnose my own case, Mr. Brown. I couldn't say that.

Q. Can you give us any fact in any one year or anything that would make you different today than you were from 1929 to 1934?

A. I know that when I got out of the insane asylum that my object was to get away from Nashville, I felt an impelling urge to get out of that town, run away from that disgrace, that stigma of insanity that was over me
1202 at that time, I wanted to try to live it down and get in some other town. I did come to Louisville and worked here, but I always felt like that record, insanity record and forced marriage, was catching up with me.

Q. Did you have a feeling of guilt?

A. Well, it wasn't a feeling of guilt so much as a feeling, probably built up a sense of inferiority, I think.

Q. No remorse?

A. I don't know that I felt any remorse. I felt like that I had been rather badly dealt with.

Q. You mean in comparison with Mrs. Lamb and Mrs. Wagner, you felt you were badly dealt with?

A. Now that's relative. I wouldn't know how to answer that.

Q. But you went back to Nashville, even after this feeling, whatever kind of feeling you had, you returned to Nashville many occasions after that?

A. I went to Nashville because I was broke. I had to go to Nashville.

Q. And in the early part of 1934 you left Nashville, did you not?

A. No. As I stated before, I was working at the Du-

Testimony of Thomas H. Robinson, Jr.

Pont in Nashville up until May of 1934.

Q. Well, you left then?

A. I was discharged from the employ of Du Pont in May of 1934. If you would like for me to explain the circumstances under which I was discharged, I would be glad to.

Q. Well, if you want to give them, it is quite all right with me.

A. At that time I was arrested, at least a warrant was sworn out for me, charging that I had robbed a young woman of a diamond ring to the value of \$90.00, and that warrant was served on me at my home, and the warrant charged that I had taken her out at 2:30 in the afternoon on Tuesday afternoon, I don't recall the date, and it was necessary in order for me to defend myself on that charge of robbery to bring in the accountant of the Du Pont with whom I was working, with my records, and the records of Du Pont, to show that I was working sixteen miles away on that afternoon of Tuesday. And when the accountant from Du Pont brought that record in, my previous insanity record was disclosed to him, which he didn't know before that, and when he went back he referred the matter to this Mr. Ward, and Mr. Ward got out the application of the National Surety Company who had bonded me, and in that application I had never made any statement about the insanity record or having been arrested before, and Mr. Ward said that he would have to temporarily suspend me from employment of Du Pont until I could make arrangements with the Surety Company, that I had made a misstatement in my bond application.

1204 Q. Now, as a matter of fact, didn't Mr. Ward offer you another job where you would not be under bond?

A. No, he did not. He couldn't—

Q. Not that he could not, but did he?

A. No, he did not.

Mr. Hogan: Now he may explain.

Mr. Brown: Certainly he may explain.

The Court: Go ahead, make any explanation you want.

The Witness: In making this bond with the National

Testimony of Thomas H. Robinson, Jr.

Surety Company when I was working with Du Pont, I had to naturally state in that bond application as to whether I had any previous record or been convicted of any felonies, and I had stated no, that I had never been in any institution, where as a matter of fact I had been in the insane asylum as a result of that former criminal indictment, and Mr. Ward wouldn't give me employment until I had made satisfactory arrangements with the Surety Company which I couldn't do.

Q. How long did you remain in Nashville after that?

A. Oh, a very short time.

Q. Why did you leave?

A. You know why I left, Mr. Brown?

Q. Tell the jury why you left.

A. I left Nashville because another false charge of robbery was put on me.

1205 Q. All right, tell the jury about that.

A. One right on top the other—

Q. (Interrupting) Man or woman?

A. It was a woman.

Q. All right, tell the jury about it.

A. This woman came to my home one night with a deputy sheriff with a warrant charging I had robbed her of the sum of \$8.00 or something. She was a woman known to me as a prostitute in Nashville, Tennessee. And she and this girl who had previously charged me with robbery at 2:30 on the afternoon when I was working at Du Pont, were friends, and I had met both of them at a night club where there was gambling in Nashville, and this one girl had gone broke when she was shooting dice on a table and offered me a ring which I loaned her some money on, about ten or fifteen dollars, and she wanted me to hold it for her for one week or two weeks, I don't recall which, what the period was, and I held it for approximately a month and sold it and she later called me up and wanted the ring back and I couldn't give it to her. Then she made demands on me for money, stated that this private detective had given her the ring and he was wondering what she had done with it and she couldn't make any explanation to him what became of the ring, she and this other girl were both

Testimony of Thomas H. Robinson, Jr.

going with this private detective, and he attempted
 1206 to put a little pressure on me to get the ring or repay
 the money, and I wasn't able to do it. I didn't
 have the amount of money myself. As a result this first
 girl charged me with robbing her of the ring which was
 proved by the magistrate as being a false charge because
 I was working at Du Pont on the day she claims I took
 the ring from her.

Q. Why did you leave Nashville?

A. I left Nashville because this second girl, who was
 a friend of the first, came out with a warrant charging
 me with robbery again, the sum of \$8.00. I jumped out the
 window, the two deputy sheriffs were in my house, and
 went to my wife's home or in-law's home, from there to
 Chicago.

Q. You mean when the deputy sheriffs came to arrest
 you, you jumped out of the back window and left for
 Chicago?

A. I sure did.

Q. Now I will ask you, if about that time, in 1934, in
 connection with the offenses that you have testified about,
 you did not make the statement to Mr. Richard N. Attkis-
 son, who was then District Attorney General of Davidson
 County and the prosecutor of Davidson County, Davidson
 County, Tennessee, that "Let those women testify against
 me and I will smear them all over the paper of Nashville."
 Didn't you make that statement to Mr. Attkisson?

A. I made no such statement as that, no.

Q. In words and substance didn't you state
 1207 that to Mr. Attkisson?

A. I do not recall ever making any such state-
 ment to Mr. Richard Attkisson.

Q. When you say you do not recall it, you mean you
 didn't make it?

A. I am sure I didn't.

Mr. Brown: Your Honor, if we are going to take a
 recess, I would like to take it at this time.

The Court: All right. Members of the jury, we will
 take a short recess at this time.

Do not discuss the matter among yourselves or with

Testimony of Thomas H. Robinson, Jr.

anyone, or permit anyone to talk about it in your presence.

Mr. Marshal, announce a short recess.

A short recess was here taken, after which the hearing was resumed as follows:

Cross-examination of Thomas H. Robinson, Jr., continued by Mr. Brown, as follows:

1208 Q. Now, Mr. Robinson, directing your attention to the final part of your stay in Indianapolis, your wife arrived, Mrs. Frances Robinson, arrived with the ransom money, didn't she?

A. That is correct, yes.

Q. And at that time there were \$50,000 in the ransom money?

A. I think there was. I didn't count it, but I am sure it was \$50,000.

Q. How was that ransom money made up?

A. As I recall it, it was in packs of, say, \$50 to a pack. Bank wrappers were around each package of bills.

Q. And were they fives, tens or twenties?

A. Yes.

Q. Wrapped separately?

A. Yes they were all separate from each other. That is the fives were wrapped separately. I don't say that the fives, tens and twenties were in the package separately. But they were wrapped separately.

Q. And wasn't each denomination of bills wrapped separately?

A. No.

Q. Of your recollection of the ransom money, that isn't true?

1209 A. I don't recall it if it is.

Q. Now you spoke of some provision of the ransom money—\$25,000 to you and \$25,000 to Mrs. Stoll. Your wife of course was there in the apartment, was she not?

A. Yes, she was in the apartment.

Q. And you undid the ransom money at that time?

A. Yes.

Q. And being a careful and prudent person you counted the money at that time?

Testimony of Thomas H. Robinson, Jr.

A. No, I never counted the money.

Q. You took Mr. Speed's word for it that there was \$50,000 in there?

A. I must have. I didn't count the money in the apartment, I know that.

Q. How did you make the division if you didn't count the money?

A. It was in a brown paper bundle, and I broke the bundle open and counted out approximately \$25,000 and put it on the sofa and the remaining which was in a brown paper package in my suitcase.

Q. I thought you just said you didn't count the money?

A. The main part of it I didn't count. I counted out what I thought was \$25,000 but the money that was in the package I didn't even disturb. I didn't even take
1210 it out of the package.

Q. What did you count it out in—what bills did you give her?

A. I don't recall.

Q. Now, you have a recollection of that I am sure.

A. There were fives, tens and twenties in the package and I don't—

Q. (Interrupting) Well did you give Mrs. Stoll five dollar bills? Or ten dollar bills? Or twenty dollar bills?

A. I would say offhand it was a mixture.

Q. Of what proportion? Do you recall how many twenty dollar bills you gave her?

A. I don't recall how many of each there were. No.

Q. But you counted approximately or actually one-half. Is that correct?

A. I think it was actually one-half, yes.

Q. You wanted a fair division of the spoils?

A. I had agreed upon that before.

Q. And you were anxious to carry out your agreement, of course?

A. Well I did carry it out.

Q. Now what size package did this \$25,000 make?

A. As I recall it was a package about this long
1211 —(indicating).

Q. Well do you mean this long (indicating),

Testimony of Thomas H. Robinson, Jr.

or are you getting shorter?

Court: Give it in inches or feet, if you can?

Witness: Possibly 14 inches long by the width of two bills wide—I know that. You know what a bill is, I don't know the length of a bill.

Q. Well, you can approximate it? You saw 25,000 of them, didn't you? That wide?

A. I meant the length of the bill. The package was composed of bills I think there were two sets of bills in the package, and the package was as wide as two bills are long.

Q. And the entire package was about 14 inches long, would you say?

A. I think about that.

Q. And about 6 inches wide?

A. No, it was wider than that.

Q. Wider than this? About 8 inches?

A. Probably about 8 inches or 9 inches.

Q. Now you, of course, had this discussion of this division with your wife and Mrs. Stoll?

A. Not with my wife. I never had any discussion with her about it.

Q. Where was your wife while this discussion
1212 was going on?

A. I think at the time she was preparing something to eat for Mrs. Stoll in the kitchen of the apartment. I know she got Mrs. Stoll a glass of milk.

Q. A glass of milk?

A. Yes.

Q. How long did it take you to count out the \$25,000.00?

A. Why I couldn't say.

Q. Do you mean it took you about the same length of time as it took your wife to go to the kitchen and get a glass of milk in a three-room apartment?

A. No, I didn't say that. I said my wife went into the kitchen and prepared some food and a glass of milk.

Q. Oh, food. Well, what food did she prepare?

A. I couldn't say—I don't know.

Q. Well you certainly would remember what your wife and Mrs. Stoll and you ate?

A. I did not eat.

Testimony of Thomas H. Robinson, Jr.

Q. All right what did they eat?

A. All I remember is that I saw her eating when I left there. She was eating some manner of food; I don't remember what it was—eggs, bacon and she had a glass of milk, I know.

1213 Q. Steak?

A. She had a glass of milk.

Q. Sirloin steak, or anything like that?

A. I don't know.

Q. It didn't take any length of time to prepare it, did it?

A. I couldn't say.

Q. What sized package did this so-called \$25,000 make?

A. The remainder that I had?

Q. Yes?

A. It made a package half the size of the original package.

Q. Where did Mrs. Stoll take that package?

A. Well I don't know. I left the apartment.

Q. Where was the money?

A. What money?

Q. Well that is what I want to know—what money?

A. I told you that I left \$25,000 of it there on the sofa.

Q. Your wife was in there, of course?

A. Well she was in there later, I know that. I know at the time I counted the money out she was in the kitchen of the apartment.

1214 Q. And the money was left on the sofa?

A. Yes.

Q. You didn't see Mrs. Stoll pick it up?

A. No I didn't see her.

Q. And your wife came back before you left into the living room?

A. Yes.

Q. And was the money there on the sofa?

A. I suppose it was.

Q. Spread out like that?

A. Well I don't know whether it was spread out or stacked up or how it was.

Testimony of Thomas H. Robinson, Jr.

Q. It made a right sizeable pile of money, did it not?

A. Yes.

Q. You would have no difficulty in distinguishing between \$25,000 and \$1.00, would you? Or \$10,000.

A. No, sir.

Q. Or \$470.00 would you?

A. No, not a bit.

Q. Now you gave your wife a portion of the ransom money, didn't you?

A. I gave her a package of it, I think, a part of the package in order to get Mrs. Stoll home.

Q. Well Mrs. Stoll didn't need any money, did she, to get home? She had \$25,000.

A. Well I gave it to my wife for that purpose—to meet my wife's own personal needs.

Q. Well you—

A. (Interrupting) My wife had given me everything she had.

Q. Well you told the jury you gave your wife money to get Mrs. Stoll home?

A. My wife needed money to get home.

Q. But you just said you gave it to your wife to get Mrs. Stoll home. Did Mrs. Stoll need any money to get home?

A. I don't suppose she did, but my wife did.

Q. Now you have subpoenaed your wife here to testify, didn't you?

A. Yes I have.

Q. And she of course knows all about that \$25,000 spread out on that divan, doesn't she?

A. I couldn't say. I have never talked to my wife since that day.

Q. Well your lawyers have, haven't they?

A. I can't answer that. I suppose they have.

Q. You know they have?

A. Oh yes, I am sure they have.

1216 Q. And your contention now is that you divided the \$50,000 up into two packages of \$25,000 each; that you left this \$25,000 spread out on the divan; that your wife was there in the living room when you left the

Testimony of Thomas H. Robinson, Jr.

apartment; that you didn't see Mrs. Stoll pick up that money, but that you had theretofore made an agreement with Mrs. Stoll to share the ransom money to the extent of \$25,000. Now is my statement correct?

A. That is substantially correct except for the fact that I don't recall the \$25,000 that I took out first being spread on the lounge.

Q. Well you said you counted it?

A. It might have been stacked up. But I don't think it was spread out on the lounge.

Q. Well you counted it, didn't you?

A. I did.

Q. You put it on the lounge or the divan—whichever you want to call it?

A. Yes, I did.

Q. You did not see Mrs. Stoll pick it up?

A. I could not say that I saw her pick it up—

Q. (Interrupting) Well did your wife get the \$25,000?

A. Not that I know of. I don't know what be-
1217 came of it.

Q. Well you don't know that Mrs. Stoll got \$25,000, do you?

A. Well I know that I gave it to her.

Q. I thought you said you put it on the divan?

A. In her presence I took it out and put it on the lounge, in her presence, with the understanding that it was for her.

Q. It was also in the presence of your wife that the money was on the divan?

A. Well I couldn't say.

Q. You have no recollection of that?

A. I left the apartment immediately.

Q. Well then you don't know whether your wife or Mrs. Stoll got it, do you?

A. I can't say she got it, no.

Q. Well. And \$25,000 makes a right heavy package, doesn't it?

A. I wouldn't say heavy. My wife carried \$50,000 and it wasn't so very heavy.

Q. Did she carry it concealed about her person?

Testimony of Thomas H. Robinson, Jr.

A. I don't know how she carried it. I didn't see her carry it but I am sure she did not carry it concealed about her person.

Q. She didn't have it inside of her dress, did she?
1218

A. I don't know.

Q. She didn't have it in the top of her stocking, did she?

A. When I saw her she had it in a bundle at the back door.

Q. In a bundle, carrying it in her hand?

A. At the back door.

Q. And then you left that apartment and started on your way?

A. That's correct.

Q. And your way led back and forth across the continent at least twice?

A. No, I would say two or three times.

Q. And it included stops at the Waldorf Astoria, the Ritz Carlton, and the St. George Hotel, and the New Yorker, and the Los Angeles Ambassador and the Biltmore and the other hotels that have been testified about?

A. That is correct.

Q. All of them are correct?

A. Absolutely.

Q. And the names that have been testified about, they are all correct?

A. I am sure they are.

Q. And it included the purchase of how many expensive automobiles?
1219

A. Oh I don't know—that money I threw it away, right and left.

Q. Well, right and left. And it included a Packard automobile in Los Angeles for Mr. Shactmeyer?

A. Yes.

Q. For \$3200.00?

A. Yes.

Q. It included the purchase of a Plymouth car in New York? It included the giving of \$4,000 to some one?

A. Yes it did.

Testimony of Thomas H. Robinson, Jr.

Q. Who did you give it to?

A. Well I gave \$4000 of it in cold money to my mother.

Q. What do you mean by "cold money"?

A. I mean money that was not ransom money.

Q. It had been exchanged for ransom money?

A. Yes.

Q. You mean you changed the ransom money?

A. I did with the help of Jean Breese and her brother.

Q. How did you change that money?

A. We went to the bank, Jean Breese and her brother and I, and exchanged the money for good money.

Q. And did you also use the device of going to
1220 one city and telegraphing a large sum of money to another city, then going to the other city and picking up new money from the Western Union?

A. That was entirely Jean Breese's idea.

Q. Well I say, did you do that?

A. Yes.

Q. Now this money, where was this money given to your mother?

A. In an apartment in St. Louis.

Q. When?

A. November 1935, I think it was.

Q. Now I will ask you if you didn't wash that money very carefully?

A. I think Miss Breese washed it. One of us did.

Q. When you say one of you did, didn't you wash that money?

A. Possibly I did.

Q. Why did you wash the money?

A. Why did I wash the money?

Q. Yes, why did you wash it?

A. I imagine to take off the fingerprints.

Q. Well I am not asking you for your imagination. I am asking you why you washed that money?

A. To take the fingerprints off.

Q. Well you hadn't committed any offense.
1221 This was all just an agreement. You hadn't kidnapped anybody.

Testimony of Thomas H. Robinson, Jr.

A. At that time I met Miss Breese, at the time I left Indianapolis, I met her New Year's eve of 1935, and it was through her that I was able to do many of the things I did in escaping the law.

Q. Well you had not committed any offense.

A. You claim I had.

Q. But you say you hadn't. You say it was all an agreement, and I want to know why a year later you were washing money?

A. With the entire FBI looking for you, I think it was appropriate to.

Q. So you were attempting to escape detection?

A. Well I think I was.

Q. Well were you?

A. Yes.

Q. And some other of that money went to your family, didn't it?

A. I gave Miss Breese \$2,000 or \$3,000 of it for her family.

Q. And some of it also went to your father, didn't it? And to your lawyer, in Nashville?

A. I don't know.

Q. Now I will ask you if your father didn't get
1222 a part of that money, and if Mr. Monte Ross didn't get a part of that money and Dr. Fenn didn't get a part of that money?

The Court: Let's take one at a time.

A. My father obtained about \$500.00 of that money in New York City. It was not ransom money.

Q. It was ransom money that you had washed, cold money as you call it?

A. Not ransom money that I had washed.

Q. Ransom money that you had changed?

A. Yes.

Q. And Dr. Joe Fenn got part of that money, too, didn't he?

A. I am sure Dr. Fenn did not get any of it.

Q. And Mr. Monte Ross got some of that money, too, didn't he?

A. I don't know that he did.

Testimony of Thomas H. Robinson, Jr.

Q. Well you delivered money for his use, didn't you?

A. I did not.

Q. Didn't you send Stephen Breese with some money for Mr. Ross?

A. That's different. Yes, I sent Jean's brother down to Nashville with some money for my father and not for Mr. Ross or Dr. Fenn. What my father did with it, I don't know.

1223 The Court: How much was it?

Witness: \$500.00.

Q. Now, with reference to the Shaetmeyer transaction, that was a Packard?

A. That is right.

Q. And you paid \$3200.00 for that, didn't you?

A. I did.

Q. Now as a matter of fact you spent about \$2000.00 a month is your best estimate, isn't it?

A. No I could not have spent that much money.

Q. How much did you spend?

A. I have no way of estimating that. I have no record of it.

Q. The best estimate you can give? About how much a month?

A. I wouldn't know. I would not know what I spent. I know when I was arrested I only had less than \$4000.00 of it left.

Q. You had some hidden out in a fireproof storage house out in California, didn't you?

A. I had a small amount of money.

Q. What do you mean by "a small amount of money"? How much did you have?

A. I don't know.

1224 Q. Oh yes you do. How much did you have?

A. At one time we had about \$7500.00 out there, and I think I had drawn on that and probably had taken it out one or two times.

Q. At the time of your apprehension you had about \$7500 or some approximate figure?

A. No. I think the records show that, that I had about \$4000 at the time I was apprehended.

Testimony of Thomas H. Robinson, Jr.

Q. On your person. But didn't you have some stored out?

A. No.

Q. Are you positive about that?

A. No. If you are speaking about previously when that money was in the Forest Hills Storage Company—

Q. (Interrupting) I am not talking about the Forest Hills Storage Company. I am talking about the storage company in California?

A. There was only one storage place I kept any money.

Q. Well where in Los Angeles did you leave any money?

A. That was at the storage warehouse which you already know about.

Q. That has not been testified about, has it?

A. No but I am sure you know it because Miss 1225 Breese told the FBI.

Q. How much money did you have at Forest Hills?

A. I don't remember. At least \$10,000 or \$7500 there, but I don't know.

Q. And the \$10,000 or \$7500 you had at Forest Hills for a while, and then what was the name of the company in Los Angeles where you had some \$7500.00 or \$10,000?

A. Where the correspondence file was, you mean? That was in the American Storage Company on Beverly Boulevard.

Q. Now at the time of your apprehension you apparently were rather heavily armed. Is that correct?

A. Well I don't know that you would call it heavily armed. I had an automatic shotgun with No. 7 shells in it for hunting birds.

Q. Human birds or other kind of birds?

A. Well I never shot anybody in my life so I wouldn't think it was human birds. And I had a 45 automatic pistol which was my own.

Q. What did you have it for?

A. For protection, I suppose.

Q. From the FBI?

A. I don't know. I wouldn't say for just what our

Testimony of Thomas H. Robinson, Jr.

pose I did have that.

1226 Q. What other guns did you have?

A. We had two 25 automatics. Miss Breese had one and I had the other.

Q. What for?

A. Well for the same reason that anyone would have guns around home.

Q. Well tell the jury that reason?

A. Well we had large sums of money on us, and for no other reason.

Q. Well a lot of that money was in safety deposit boxes or in safety storage warehouses, wasn't it?

A. Yes, but I had \$4000 on me when they took me in.

Q. And you were protecting that money from whom?

A. From anyone who would be likely to try to get it.

Q. What other guns did you have?

A. There was a .38 in the house which was not my gun. That gun belonged to Mrs. Spencer that I rented the house from.

Q. So, you had a shotgun for hunting birds. Now that shotgun was immediately inside your front door?

A. The shotgun was either in the bed room or the living room, I don't recall which.

Q. Have you ever been troubled with birds in your bed room or living room?

A. No but I did go out on the desert and shoot
1227 birds.

Q. You went out where?

A. On the desert.

Q. Was the gun loaded?

A. I think the gun was loaded.

Q. Were you preparing to shoot birds when you were apprehended?

A. Well I don't think I would have had No. 7 shot in the shotgun if I was prepared to shoot human beings with it.

Q. I didn't say anything about shooting human beings. Did I put that in your mind?

A. You sure did. You said "human birds."

Q. But we will agree that you were not going to shoot

Testimony of Thomas H. Robinson, Jr.

birds in your bed room or living room with that loaded shotgun?

A. No I don't think so.

Q. Now the 45 I think you said that was for protection?

A. Yes.

Q. And you didn't have a permit?

A. Yes I did have a permit to shoot a gun. I bought a gun in Indianapolis, Indiana. I gave my right name. It took me 24 hours to get the gun. I had to sign an application for it, and I ordered it at the same time the Chief of Police of Indianapolis was in the sporting
1228 goods place.

Q. When did you buy that gun?

A. In 1934.

Q. What for?

A. Why, I couldn't say.

Q. Oh Mr. Robinson. In 1934 did anything unusual happen in your life after you bought that gun?

A. I never used the gun on anybody.

Q. What did you buy it for?

A. I don't know.

Q. You cannot answer that?

A. I can't say.

The Court: What time in 1934 did you buy it?

A. August, I think.

Q. Were you in sufficient funds at that time, Mr. Robinson?

A. No I would not say that I had sufficient. I had some funds but I wouldn't say how much.

Q. You had enough to buy a 45?

A. As I recall it only cost around \$36.00 at that time?

Q. \$36.00 you say you paid for that gun?

A. I think so.

Q. Now I show you this letter. I ask you to
1229 examine that letter and that envelope and tell the jury whether you typed that letter and whether you mailed it to your father?

A. I am sure that that is the letter that I wrote.

Mr. Brown: I would like to read this letter to the jury.

Testimony of Thomas H. Robinson, Jr.

"Mr. Thomas H. Robinson
1716 Ashwood Avenue
Nashville, Tennessee.

The Court (Interrupting): What is the date of that letter?

Mr. Brown: It is undated, Your Honor. The envelope bears the date October 13th, 5:30 p. m.

The Court: All right.

Mr. Brown (Reading):

"Dear Sir:

"I am the kidnapper of Alice Stoll. She is alive and well in a place close to Louisville, and only has a small cut on her head, which has healed.

"She is sending her wedding ring, on the side of which is engraved her name and Berry Stoll's, to identify us. Also, she is sending a letter in her own handwriting. You may identify her handwriting, if necessary.

"MAYBE YOU HAVE TURNED THE MONEY OVER TO THE ONE WHO APPROACHED YOU FOR IT.

1230 "HOWEVER, IF YOU ARE NOT SURE THIS IS THE PROPER ONE, AND YOU HAVE NOT ALREADY PAID THE MONEY, DO THE FOLLOWING:

"PAY THIS \$50,000 over to your daughter-in-law, who lives in Sterling Court.

"We will give her instructions secretly. Have her walk around her neighborhood so as the contact with her can be made.

"HAVE HER FOLLOW OUT EXACTLY THE PLANS WHICH ARE MADE KNOWN TO HER.

"SHE WILL HAVE TO MAKE A TRIP, so tell her this:

"This should be all the authority you need.

"Mrs. Stoll will never be seen alive, unless you do this.

"ALSO SEE THAT YOUR DAUGHTER-IN-

Testimony of Thomas H. Robinson, Jr.

LAW IS NOT FOLLOWED OR WATCHED. IF SO, well, you know what we threatened to do.

"This is all the identification that you need. So go ahead and carry out the plan as soon as possible.

"KIDNAPPER

"BE SURE AND TELL YOUR DAUGHTER-IN-LAW TO CARRY OUT HER INSTRUCTIONS JUST AS THEY WERE GIVEN TO HER.

(In red type) "DO NOT GIVE THIS LETTER TO POLICE UNTIL YOU HEAR THAT MRS. STOLL HAS BEEN RELEASED. ANY EFFORT TO SHADOW YOUR DAUGHTER-IN-LAW WILL MEAN DEATH TO MRS. STOLL. YOU ARE A FRIEND OF THE STOLL'S. IF YOU WANT TO SEE HER RETURNED ALIVE, DO NOT MAKE KNOWN THIS LETTER TO ANYONE UNTIL SHE IS RELEASED."

(The document above read was handed to the Reporter, marked Government's Exhibit No. 80, and filed.)

Q. Now, with reference to the purchase of the 45 automatic, you have talked about, I will ask you if this letter was not written after the purchase of that automatic?

1231 A. Yes, it was.

Q. Now, Mr. Robinson, coming back again to your spending of the ransom money, in the Christmas season of 1934 you were in New York, weren't you?

A. Yes, I was in New York City.

Q. And in one of the hotels there, I will ask you if you didn't meet a young woman with whom you had considerable drinks?

A. Not in a New York hotel.

Q. Well during the time you were staying at a New York hotel?

A. I possibly met several.

Q. Well at Greenwich Village particularly, if you didn't meet a young woman with whom you had consider-

Testimony of Thomas H. Robinson, Jr.

able drinks, and if you didn't take her to your hotel room and if she didn't give you some knock-out drops?

A. I received what is known as a Mickey Finn from a nightclub I was in, and I did go to a hotel and passed out, I think.

Q. And a young woman was with you?

A. Yes, she went to the hotel with me, as I recall it.

Q. And you had at that time about \$500.00 on your person didn't you?

A. I don't remember.

1232 Q. Well a considerable sum of money, didn't you?

A. Yes I had some in my billfold.

Q. And in your valise you had considerable money in there?

A. Yes, I had some.

Q. And I will ask you further if after you had this Mickey Finn as you call it administered to you, didn't you wake up some days later, or some hours later, and found that this woman you had gone to the hotel with had taken all of the available money that you had on your person, with the exception of a \$5.00 bill? And didn't you make this statement, "Well that's a good joke on her. She got away with less than \$500.00 and \$48,000 was in my suitcase." Did you make that statement?

A. Who would I say that to?

Q. Well did you say that?

A. I did not.

Q. Well how much money was it? Is it all true except the \$48,000 part?

A. Yes, I admit that but there wasn't \$48,000 in the suitcase, because I didn't have that much.

Q. Well how much money was there?

A. I don't know. I don't know. I had been spending some money and I don't know just how much there
1233 was in the suitcase.

Q. Now this was around Christmas time, in 1934, wasn't it?

A. I don't have the slightest idea how much money was in there or how much I spent at all.

Testimony of Thomas H. Robinson, Jr.

Q. You mean you spent it so freely?

A. No; I just made no effort to keep up with what I had spent.

Q. You still think it is a good joke on that girl when she got a few hundred dollars and you had—

A. (Interrupting) I think it was a good joke on me, instead of the girl.

Q. She got a very small part of the ransom money whether it was \$5,000 or \$50,000 in the suitcase?

A. Well she did pass up the money that was in the grip—I don't know how much was in it.

Q. That is the first girl that ever got the best of you?

A. It seems like they got the best of me all my life if you ask me.

Q. You lay your downfall to women mentally or physically?

A. I wouldn't want to say.

Q. You wouldn't want to go that far?

A. No I wouldn't.

1234 Q. Now, Mr. Robinson, on your return to Louisville after your arrest in Glendale, California, I will ask you if the arraignment date wasn't set for 10 a. m. on the 13th of May 1936 and, further, if that hour wasn't delayed from hour to hour pending the arrival of your mother from Nashville and pending the arrival of your father and a friend of his from Nashville?

A. I think that that's true, yes.

Q. So this inference of 6 p. m. arraignment, that was purely for your convenience and the convenience of your mother and your father, wasn't it?

A. It was not for my convenience.

Q. Well for the convenience of your mother and your father?

A. I wouldn't say whether it was for any of my family's convenience. It was for the convenience of the FBI to get me to plead before I had the advice of counsel.

Q. Now you say Mr. Connelley and Mr. Bugas—what did they threaten you with? Death if you didn't plead? Or what did they threaten you with?

A. Yes they threatened me with the death penalty.

Testimony of Thomas H. Robinson, Jr.

They showed me a newspaper which said in headlines that said, "Robinson to die." They laid that out before me and insisted that I plead guilty.

Q. When you say they "insisted that you plead
1235 guilty," which one of them said that?

A. Mr. Dewey I think was the main instigator of that.

Q. All right, go ahead. What did he say?

A. Well I don't know exactly what he said.

Q. Well the substance of it?

A. I don't remember the substance of it. I was in such a confused state of mind from lack of sleep and from being pushed around that I couldn't say just what they said.

Q. What do you mean by being pushed around? Riding in an airplane?

A. I was hurried along from one place to another, and questioned all day and all night with no sleep. I can't remember the actual words of the conversation but I remember the effect of it.

Q. The effect was if you did not plead guilty that the FBI would kill you? Or who would kill you?

A. I don't know.

Q. You don't know. Did you have the impression that the FBI had machine guns trained on you at that time?

A. I know they did have them trained on me.

Q. During your stay in the Starks Building?

A. I don't know about that.

Q. Well you say you do know. How did you
1236 know that?

A. Well there were machine guns in the Starks Building.

Q. Well did they have them trained on you?

A. I didn't say that they had them trained on me at that time, no.

Q. Well did they leave the impression that unless you plead guilty that they were going to shoot you?

A. I don't remember just what impression they did leave on me.

Q. If any. You don't remember what impression it

Testimony of Thomas H. Robinson, Jr.

did leave on you, if any?

A. Yes, it left some impression on me—

Q. (Interrupting) A slight impression?

A. I would say it was more than a slight impression if they threaten you with death if you don't plead guilty.

Q. I show you a letter dated July 1, 1936, addressed to Mr. W. A. Smith, Special Agent, and ask you if you wrote that letter?

A. Yes I wrote that letter.

Q. Wasn't that letter written voluntarily by you for the purpose of accomplishing that which you seek to have accomplished in that letter?

1237 A. The purpose of that letter was to release an automobile which the County of Los Angeles held in storage. There was some charges on the car and I was told that I could get the money for this car, which would be sold at a Sheriff's auction if I were to disclose to this Agent Smith how I obtained the Plymouth automobile, with what money I bought it and how I bought it so that the FBI would release the car to me or the money that was received in return from the sale of the car.

Q. And you wanted the money to go to your mother, didn't you?

A. I did.

Mr. Brown (Reading):

“July 1, 1936.

“Mr. W. A. Smith, Special Agent,
Federal Bureau of Investigation
U. S. Department of Justice
Kansas City, Missouri.

“Dear Sir:

“Would you please turn over to my mother, Mrs. Thomas H. Robinson, Jr., all of my personal effects that are free and unattached.

“My automobile which I purchased from Patterson & Schmidt, Woodhaven, N. Y. C. for the sum of \$784.00, purchase price of which consisted of one \$500.00 bill and three \$100.00 bills, which money was received in exchange for ransom money, which said automobile is

Testimony of Thomas H. Robinson, Jr.

now held under attachment by the County of Los Angeles, State of California.

1238 "If this car, or any money recovered can be legally released, I would like for it to be turned over likewise to my mother.

(Signed) "Thos. H. Robinson, Jr."

Mr. Brown: That has already been filed as Government Exhibit No. 51.

Q. And you wanted the money to go to your mother, didn't you?

A. I did.

The Court: Members of the Jury, we will take a very short recess. Just move around gently and get back in the box in about five minutes. Do not discuss this case among yourselves or with anybody or allow anyone to discuss it in your presence.

After recess the following proceedings were had:

Mr. Brown: That is all the cross-examination of this defendant,

The Court: Do you wish to examine him further, Mr. Hogan?

Mr. Hogan: Just briefly, if Your Honor please.

The Court: All right, let the witness take the stand.

1239 Redirect Examination by Mr. Hogan.

Q. Mr. Robinson, you were asked upon direct examination if your insanity proceedings was not had at the instance of your father as a sham to shield you from the criminal charges of these indictments? Is that true?

A. That is not true. My father at that time had no political influence to that extent and at the time the criminal charges were nolle prossed against me I was in the Central State Hospital.

Q. What do you mean by nolle prossed, so that the jury may know?

A. The criminal charges were dropped and filed away at the instance of the State, and I could have gone free after that time; after the charges were dropped I could have gone free but I wasn't; my father still thought that I

Testimony of Thomas H. Robinson, Jr.

was insane and—

Mr. Brown (Interrupting): I object to what he thought.

The Court: He can tell what his father did, but not what his father thought.

Q. Well before you tell that, when the charges in the criminal court in Nashville were filed away, was there anything to then hold you in the insane institution?

A. No, there wasn't. I could have gone out, my
1240 father could have gotten me out.

Q. Well, did you get out?

A. No, I didn't.

Q. What happened then?

A. He took me to the Davidson County Court and had me recommitted.

Q. Was an inquiry into your sanity had in the Davidson County Court?

A. There was.

Q. Was that after the charges in the criminal court had been filed away?

A. Yes it was, some months afterwards.

Q. And what was the result of this second inquiry into your sanity?

A. I was recommitted to the insane hospital at Bolivar.

Q. Now, Mr. Brown asked you if you didn't make the statement that if he brought these women into court that you would smear them. Did they bring one or more of these women into court that he mentioned against you?

A. They did. They brought the first girl that testified that I took this ring away from her at 2:30 in the afternoon and I was in reality working for Du Pont at that time. She appeared in Magistrate's Court and the
1241 Magistrate threw the case out, after I produced proof that I was working that afternoon.

Q. Was she present in court and did she testify against you?

A. She was there and she testified and I didn't smear her.

Q. Did you attempt or threaten to smear her?

A. I did not.

Q. What happened to this other charge that was placed?

Testimony of Thomas H. Robinson, Jr.

against you by this second woman?

A. The girl later on stated that she was mistaken in my identity—

Mr. Brown (Interrupting): I am going to object to what she said.

The Court: Objection sustained.

Q. Well what happened to the charges?

A. The charge was dropped.

Q. Did you smear her?

A. No I didn't smear her at all.

Q. Well did you attempt to smear her?

A. No I didn't. I was the one who was the loser. I lost my job at Du Pont's as a result of it.

Q. Did you hit Mrs. Stoll on the head with a pipe?

A. I did not.

1242 Q. Or any other object in her home?

A. I did not.

Q. Mrs. Alice Stoll, I mean?

A. I did not. I had no pipe in my hand and I never saw that pipe that was there until I came into this court room.

Mr. Hogan: That is all.

Recross-examination by Mr. Brown.

Q. Wasn't that pipe shown to you on May 11th and 12th, 1936?

A. I do not recall ever having seen that pipe in my life.

Mr. Brown: Now Your Honor, this opens up a new field at the defendant's instance.

The Court: I think that statement that he never saw the pipe, he ought to be cross-examined on that.

Q. Now as a matter of fact didn't—

(At this point the iron or lead pipe which counsel held in his hand hit the table or was dropped on the table.)

Mr. Brown: I beg the pardon of the Court and jury, the act was purely involuntary.

Mr. Hogan: Now if your Honor please, I think that was done deliberately to prejudice the jury.

The Court: I don't think so. Anyone knows that an

Testimony of Thomas H. Robinson, Jr.

1243 iron pipe of that character is likely to make a noise if it hits the table. The jury will disregard that noise. Counsel assures us that it was not intended.

Recross-examination Continued by Mr. Brown.

Q. Wasn't this pipe shown to you by Mr. Bugas and Mr. Dewey in the office of the FBI on May 12th 1936—

A. (Interrupting) It was not.

Q. And if at that time you didn't tell Mr. Bugas and Mr. Dewey that, "That may have been the pipe or it may have been the butt end of my pistol I hit her with."

A. No I did not.

Mr. Hogan: That is a statement before he was arraigned, and anything he said before he was arraigned is not admissible here.

Mr. Brown: You went into it.

The Court: I think you opened it up Mr. Hogan as to this pipe. I think any statement he made with reference to the pipe can be brought out, purely for the purpose of contradicting, if it did contradict, what he now testifies about the pipe, and it will be received for that purpose only.

A. Well I will answer that, I did not.

Q. You did not make that statement to Mr. Bugas.

1244 A. I did not.

Q. You did not make that statement to Mr. Bugas and Mr. Dewey who is now a Lieutenant Commander?

A. I did not.

The Court: Members of the jury, we will take the noon recess at this time. As I have told you before in all these recesses, do not discuss it among yourselves, or with anyone, and do not allow anybody to discuss it in your presence.

We will adjourn until 2 o'clock p. m.

Convened pursuant to adjournment and continued with the proceedings as follows:

1245 ALVIN W. KIRTLEY called as a witness in behalf of the defendant, being duly sworn, was examined by Mr. Hogan and testified as follows:

Testimony of Alvin W. Kirtley

Direct Examination by Mr. Hogan.

Q. What is your name?

A. Alvin W. Kirtley.

Q. Where do you live, Mr. Kirtley?

A. 1708 S. Fourth.

Q. What is your business or by whom are you employed?

A. I am not employed now. I have been off since April with an injured back. My last employment was at the Bernheim Distillery.

Q. During the month of October, 1934, by whom were you employed?

A. Taxicab company—Kentucky Taxicab.

Q. On the afternoon of October 16th, 1934, were you driving a taxicab over the streets of Louisville?

A. Yes, sir.

Q. Did you see this defendant, Thomas Henry Robinson, Jr., on that afternoon?

A. Yes, sir.

Q. Will you turn around to that jury and tell this jury just what you saw and observed on that occasion?

A. I was coming West on Main Street—

The Court: Let's get the time first.

1246 A. It was approximately—it was in the late afternoon. I couldn't say exactly what time. I was at Shelby and Main and this car cut in front of me and hooked my fender.

Q. When you say "this car," what car do you refer to?

A. The car that this man was driving.

Q. All right.

A. And he went on down Main Street and I followed him and caught him at Preston, and I pulled alongside of him and hollered at him, naturally mad, the words I said wasn't very pleasant, and he kept going and I followed him to Floyd Street, and he was on down in traffic ahead of me and I got behind some trucks, so I just looked out, my fender wasn't hurt, so I pulled over, cut across to Floyd Street.

Testimony of Alvin W. Kirtley

Q. Was anybody with him on this occasion?

A. There was a woman.

Q. Where was she seated in the car?

A. In the front seat.

Q. By the side of this defendant?

A. Yes, sir.

Q. Was her mouth taped?

A. No, sir.

Q. Was she—were her hands bound?

A. Not that I could see.

1247 Q. What was she doing?

A. Just sitting in the car.

Q. Did she appear to be in distress?

A. No.

Q. Did she make any effort to attract your attention?

A. No, sir.

Q. Do you associate the woman you saw with any picture of any woman that you have seen since that time?

A. Yes, sir.

Q. Tell the jury about that.

A. When I saw the picture in the paper, and when I saw the picture I recognized it as the woman—I mean, it looked like the woman that was in the car.

Mr. Brown: Unless you know, I am certainly going to object.

The Court: What picture are you referring to?

The Witness: A picture that I saw in the paper.

Mr. Brown: Have you got the paper there, Mr. Hogan?

Q. I don't have that paper. Let's ask him first what paper he refers to.

A. It was the paper—1936, I think it was, when they had the trial, I saw the picture, and I said something to my wife, I said—

1248 Mr. Brown: I object to what he said to his wife.

The Court: Never mind what you said to your wife. You saw a picture in the paper?

The Witness: Yes, sir.

The Court: You don't know whose picture it was?

The Witness: It was the picture of the woman that was in the car.

Testimony of Alvin W. Kirtley

The Court: Other than that, you don't know who it was?

The Witness: I know the name that was under the picture it said it was, Mrs. Stoll.

Q. What kind of license did this car have with reference to whether it was a Kentucky license or a license from another state?

A. It had an Indiana license.

Mr. Hogan: You may ask him.

Cross-examination by Mr. Brown.

Q. Now this was on October 16th, 1934?

A. October 10th, I believe it was.

The Court: You said the 16th on your direct testimony.

The Witness: Sir?

The Court: You said the 16th on your direct testimony.

The Witness: I think it was the 10th, I believe.

1249 Q. Now which was it?

A. It was the 10th.

Q. How do you fix that in your mind?

A. Well, it was just this way, I remember that it was the day that the paper said that she was kidnapped.

Q. Who?

A. Mrs. Stoll.

Q. Did you hear that afterwards?

A. What did you say?

Q. Did you hear that afterwards?

A. I read it in the paper.

Q. And you, of course, immediately reported it to the police.

A. No, I didn't.

Q. You didn't report it to the police?

A. No.

Q. Didn't you read about the kidnapping?

A. I didn't see this picture until it was 1936 when he was tried. I never saw any picture of Mrs. Stoll until then.

Q. At that time did you report it to the police?

A. No.

Testimony of Alvin W. Kirtley

Q. Did you report it to the FBI?

A. No.

1250

Q. Did you report it to anyone?

A. No.

Q. Now, when was it recalled to your recollection?

A. When I saw the picture.

Q. In 1936?

A. Yes.

Q. Did you report it to anybody at that time?

A. No. The best I got, he was already convicted and gone.

Q. And there wasn't any use.

A. Well, I didn't know. The fact is, I didn't want to be bothered.

Q. You didn't want to be what?

A. I just didn't want to be as a witness.

Q. Witness for what?

A. I didn't want to state myself. I would have to be called as a witness if I did have to.

Q. Did you report it to anybody?

A. No.

Q. Did you talk to anybody about it?

A. Not except at home.

Q. Haven't you talked to Mr. Hogan about it?

A. Oh, yes, this last time.

Q. How did you get in touch with Mr. Hogan?

A. I went down to see him.

Q. You went to see him?

A. Yes, sir.

1251

Q. At that time you didn't report it to any authorities?

A. Well, I just told Mr. Hogan what I saw, and I thought—

The Court: When? When did you tell him?

The Witness: That was about—I guess it has been three months ago, something like that, two months.

Q. And that's the first time that you mentioned it.

A. Yes, sir.

Q. And you recall it from seeing a picture in the paper.

Testimony of Alvin W. Kirtley

You saw all those pictures during the kidnapping period, did you not?

A. No.

Q. Now, did you read about the kidnapping?

A. Well, just the headlines. I didn't read it very thoroughly.

Q. It didn't mean anything to you.

A. Well, just as news.

Q. Did you recognize Robinson's picture at that time?

A. Yes.

Q. And at that time wasn't Mrs. Stoll's picture published in the paper?

A. I don't think I saw it.

Q. You don't think you saw it?

1252 A. No.

Q. You saw Robinson's picture, did you not?

A. Yes.

Q. At that time you recognized that was the man you saw either on the 16th or the 10th, did you not?

A. That's right.

Q. And at that time, when the entire country was looking for Robinson, you did not report it to a soul?

A. No.

Q. You did not.

A. No, sir.

Q. Why didn't you?

A. Well, just like I said, I didn't think it amounted to anything.

Q. Well, you were interested in apprehending law violators, were you not?

A. Yes, sir.

Q. And when you see a man that everybody in the country is looking for, you don't report it?

A. Well, I only saw him—he was gone then, I didn't think it would help anything.

Q. You didn't think it would help. You didn't think it would assist any law enforcement officer?

A. No.

Q. What did you go to Mr. Hogan's office for?

1253 A. Well, after I got to thinking about it and I

Testimony of Alvin W. Kirtley

kept saying something about it, I just wanted to get it off my chest and tell somebody.

Q. Finally wanted to make a confession of it.

A. Yes, sir.

Q. It had been hurting your conscience for seven or eight years.

A. Yes, I had thought about it.

Q. And you say you have been unemployed since April of this year?

A. Yes, sir.

Q. Had you known Mr. Hogan before?

A. No, sir.

Q. Never heard of him before.

A. No, sir.

Q. You went up to his office and found it out—went up to his office and found him.

A. Yes, sir.

Q. Introduced yourself to him.

A. Yes, sir.

Q. And told him, "My recollection is refreshed over a period of nine years and I can recall that I saw Tom Robinson"—did you tell him that?

A. No, sir. I told him that I was sure that I saw—the fellow had hit me was Robinson, and he asked
1254 me to tell him all about it, and then I just told him the whole story.

Q. You just told him. Was that the first time you found out it was the person you now identify as Mrs. Stoll?

A. Sir?

Q. Was that the first time you told him who the person was that you now identify as Mrs. Stoll?

A. Yes. No. He didn't ask me to identify Mrs. Stoll.

Q. I am asking you, for the first time, was that when you told Mr. Hogan the person that you identified was Mrs. Stoll?

A. Yes.

Q. What is your name?

A. Alvin W. Kirtley.

Q. Is your name Harold Colvin?

A. I have worked under that name, yes, sir.

Testimony of Alvin W. Kirtley

Q. When you say you have worked under that name, what do you mean by that?

A. Not Harold; Harry.

Q. Harry Colvin. Where do you live?

A. 1708 Fourth.

Q. Are you married?

A. Yes, sir.

Q. You say you were working for what cab company?

1255 A. Kentucky Cab.

Q. Kentucky Cab. How long did you work for them, Mr. Kirtley or Mr. Colvin, which is it?

A. Kirtley. I worked for them off and on for about three years.

Q. When did you begin to work for them?

A. Well, that I can't recall right now.

Q. If you can recall something that happened nine years ago, October 10th, you certainly can recall when you started to work for them, Mr. Kirtley.

A. Well, I worked there—I can't remember.

Q. Give me your best judgment, Mr. Colvin.

A. I think I worked there in 1933, I believe.

Q. How long in 1933?

A. I really don't know.

Q. Your best judgment?

A. Well, let's see—I came from the Ready over there.

Q. Came from where?

A. The Ready Cab Company.

Q. The Ready Cab?

A. Yes.

Q. When did you start working for the Ready Cab?

A. That was in 1932 or three, I am not sure.

Q. 1932 or three, you are not sure?

A. I only worked there a few days.

1256 Q. A few days. Then you went where?

A. To the Kentucky.

Q. Is that the company of which Mr. Burks used to be the head?

A. Yes, sir.

Q. When did you start to work for them?

Testimony of Alvin W. Kirtley

A. I couldn't tell you just exactly when it was. I had worked for them—well, the way I worked for them was off and on, and I couldn't tell you the exact date I went there.

Q. All right, approximately?

A. I would say the first time I went there was in the spring of 1934, I believe it was.

Q. Spring of 1934?

A. I think so.

Q. How long did you work for them at that time?

A. I worked off and on there for two years.

Q. Off and on—what do you mean by off and on?

A. Well, I worked a while and then maybe I would do something else and I would go back and work again when I would get out of a job.

Q. You mean you have no recollection of what you would do?

A. What I would do?

Q. Yes, whether you worked three months and
1257 quit for three months, and worked for three months more and quit for three months?

A. Yes. I didn't work that way. I just worked—I believe the longest that I was there at one time was about six or seven months.

Q. All right, when were you there six or seven months?

A. It was in 1934, I believe it was.

Q. And you think you were there from the spring of 1934 to the fall of 1934?

A. I went to the Yellow from there.

Q. When did you go to the Yellow?

A. It was in the fall of the year, I believe it was in October of 1935.

Q. You went to the Yellow in October of 1935, you now think?

A. I think that is what it was, I am not sure.

Q. What is your best judgment, Mr. Kirtley?

A. That's it.

Q. October, 1935, you think you quit the Kentucky Cab in the fall of 1934?

Testimony of Alvin W. Kirtley

A. Yes, in the latter part of 1934.

Q. What did you do for that year you were not working for the Kentucky or the Yellow?

A. Of the fall of 1934?

1258 Q. The year that you were not working. You said you quit the Kentucky Cab in the fall of 1934 and went to the Yellow in October of 1934. What were you doing that year?

A. I went from the Kentucky to the Yellow.

Q. So if you worked for the Kentucky Cab until the fall of 1934, you went right to the Yellow, didn't you?

A. Yes, I did.

Q. So you worked for the Yellow from October, 1934, did you not?

A. No. It was in 1935, I believe.

Q. Now, let's get it straight, Mr. Kirtley. How long did you work for the Kentucky Cab?

A. I worked there approximately two years.

Q. Approximately two years?

A. Yes.

Q. And when was the last time you worked for the Kentucky Cab?

A. It was in the fall—I left there in the latter part of the fall. I don't know whether it was November or what it was I went to the Yellow.

Q. What year?

A. Of 1934, I believe.

Q. The fall of 1934, you went to the Yellow.

The Court: If the witness will take his hand
1259 down, keep from covering his mouth, I think the jury will be able to hear him better.

Q. You say your name is Alvin W. Kirtley?

A. Yes, sir.

Q. I'll show you Division of Motor Vehicle Transportation, dated May 1st, 1943. What name were you using at that time, Mr. Kirtley?

A. Harry William Colvin.

Q. Harry William Colvin at that time. Now let's look at this application for renewal license. Examine that and tell the jury what name you were using at that time

Testimony of Alvin W. Kirtley

and the date.

A. Harry William Colvin.

Q. Harry William Colvin. Let's look at this other renewal and find out what name you were working under at that time.

A. Harry William Colvin.

Q. And let's look at this renewal?

A. Harry William Colvin.

Q. And this renewal?

A. Harry William Colvin.

Q. Now let's look for the same period, which is also a driver's license, and ask you to tell the jury for the same period what name you were using.

A. Alvin Whitfield Kirtley.

1260 Q. Alvin Kirtley. Now look at this one.

A. Alvin Whitfield Kirtley.

Q. Look at this one and tell the jury what name you were using at that time?

A. Harry William Colvin.

Q. And this one?

A. Harry William Colvin.

Q. So for those periods, let's see what the periods ran from Mr. Kirtley, Mr. Colvin—that one seems to be April 22nd, 1941, doesn't it?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. Now that time you are Harry William Colvin, are you not? Now let's look at this one, which is December 16th, 1940, four months before the other one, and tell the jury when you were getting a driver's license, you already had a license, what license you are applying for in that name?

A. You mean by name?

Q. Yes.

A. Kirtley.

Q. Kirtley. What were you exchanging those names back and forth for?

A. I kept two drivers' license all the time.

Q. What for?

Testimony of Alvin W. Kirtley

1261 A. I used one driving a cab and used one when I was driving my own car.

Q. One while you were driving a cab, you used one name.

A. I was working by that name for that company, had to have a driver's license.

Q. So at the same time you had in your possession drivers' licenses in the name of Harry William Colvin and the other in the name of Kirtley.

A. Yes, sir.

Q. Why was that?

A. Because I was working for the cab company in the name of Colvin and my name was Kirtley.

Q. Why were you working under the name of Colvin?

A. When I went to get a job I had to be experienced and I tried and tried and I couldn't get on, so I knew a boy by the name of that that had quit, so I applied, told them where he worked, and they gave me the card, except his name wasn't Harry, his name was Harold.

Q. What taxicab were you working for then?

A. When I first did that?

Q. That time.

A. That's when I first started driving a taxicab. That was for the Ready Cab Company.

Q. What cab company were you working for
1262 when you got that driver's license?

A. I guess it was, the first one that ever I got was the Ready Cab Company.

Q. Look at that one right there and tell the jury what cab company you were working for.

A. 1319 S. Second. I was with the Bee Line Company, I guess.

Q. Weren't you with the Sure Pure Milk Company?

A. Oh, yes. This is a Kirtley driver's license.

Q. So you weren't working for a taxicab company at all, were you?

A. Not when I got this one.

Q. So when you said you were working for a taxicab company, and wanted to be known one name in a taxicab company and another name somewhere else, you weren't

Testimony of Alvin W. Kirtley

working for a taxicab company at all, were you?

A. The only time I used the name Colvin was when I drove a taxicab.

Q. You were not driving a taxicab there.

A. No. This was Kirtley.

Q. All right, let's look at this one then. Now tell the jury what cab company you were working for there, Mr. Kirtley? I think the date appears April, 1941.

A. April, 1941?

Q. Yes.

1263 A. Well, if I was driving a taxicab—

Q. Not if—what were you doing?

A. In April of 1941?

Q. Yes.

A. Well, that was—the only time I had a license would be with the Bee Line.

Q. As a matter of fact, weren't you a male orderly at the Kentucky Baptist Hospital during that period?

A. Mail order.

Q. Male orderly..

A. I was orderly at the Kentucky Baptist Hospital, but not when I applied for this license.

Q. You were not driving a taxicab at that time, were you?

A. Not until after I was rejected from the Army.

Q. You were not driving a taxicab at the date of that application.

A. Let's see—April. No, sir, I don't think so.

Q. Now Mr. Kirtley, on October 9th, 1934, where were you?

A. I suppose I was working.

Q. You suppose you were. Don't you know?

A. Yes, I know. I was bound to be working.

Q. What?

A. Yes, I was working.

1264 Q. Tell the jury what happened on October 9th, 1934.

A. Well, I don't know of anything that happened except just working, regular day.

Q. You have no recollection of anything that hap-

Testimony of Alvin W. Kirtley

pened.

A. Nothing unusual, no.

Q. What happened on October 11th, 1934?

A. Nothing that I know of.

Q. What?

A. Nothing that I know of.

Q. How many calls did you make that day?

A. Why, I couldn't tell that.

Q. Couldn't recall that?

A. Not how many calls I made, because sometimes we made pick-ups and calls too, and we never wrote our pick-ups down.

Q. Have you ever been convicted of a felony?

A. Yes, sir.

Q. How many times?

A. One.

Q. I will ask you if you haven't been convicted twice—

A. No, sir.

Q. I'll ask you if in the year 1934 you were not convicted for the theft—

1265 Mr. Hogan: Not what he was convicted of, Your Honor please.

Mr. Brown: He said he was only convicted once.

The Court: Let's agree on the one first. When were you convicted, Kirtley?

The Witness: I was convicted for grand larceny.

The Court: When?

The Witness: It was—well, I don't know what year it was. I was called twice and was given a year probated sentence.

The Court: You were called twice?

The Witness: Yes.

Q. Who called you twice?

A. I was called in court and was released on bond and I was called back again.

Q. And what was that?

A. Grand larceny.

Q. What articles?

A. Sir?

Q. What articles?

Testimony of Alvin W. Kirtley

Mr. Hogan: Now that's objected to.

The Court: Objection sustained. The cause of it is not pertinent here. We are trying to find the time of the conviction, if one occurred. If Mr. Brown has two different dates, let's see which date the witness agrees on 1266 and we can go on the other one.

Q. I will have to find out a little more definitely this date. What date do you think you were convicted of a felony?

A. The September term of court.

The Court: What year?

The Witness: 1934, I believe.

The Court: Here in Jefferson County?

The Witness: No, sir, Taylor County.

The Court: Taylor County, Kentucky?

The Witness: Yes, sir.

Q. Now that was September of 1934?

A. I think that's right.

Q. What term?

A. September term of court.

Q. Whereabouts?

A. Taylor County, Campbellsville.

Q. Now I will ask if during that same term of court, there were not two indictments.

A. Yes, there were, all on the same charge—is that right?

Q. You ought to know a good deal better than I do.

A. I mean, it was all combined.

Q. There were two separate charges and they were disposed of at the same time, weren't they?

1267 A. That's right.

Q. So there were two indictments.

A. They were all under one, I believe. I think it was all under one, is the way I understood it, all in one.

Q. But you were called up at the same time on two separate charges, were you not?

A. That's right; yes, sir.

Q. Did you enter a plea of guilty?

A. Yes, sir.

Q. And the sentences ran concurrently, did they not?

Testimony of Alvin W. Kirtley

A. I think so; yes, sir.

Q. And to the best of your recollection that was in September of 1934.

A. I think it was.

Q. Take your hand away so we can hear you.

A. Yes, it was 1934, I believe, or three.

Q. 1934 or three?

A. I am not sure about that. It was called twice in September.

Q. If it was in September, 1934, how long did you remain in jail?

A. I was—well I was in jail until I was brought before the court.

Q. And you were in jail after that, too, weren't you, Mr. Kirtley?

A. No, sir.

1268 Q. What?

A. No. I took the sentence and had to report to the court every term for a year.

Q. Weren't you in jail for a number of days?

A. I was in there; yes, sir.

Q. Two weeks?

A. A little longer than that, I believe.

Q. A little longer than two weeks?

A. Yes, sir.

Q. Three weeks?

A. Well, about a month, I believe.

Q. About a month in jail. Now, as a matter of fact, on October 10th, 1934, weren't you in jail in Washington County?

A. No, sir.

Q. You are sure about that?

A. I am positive about that.

Q. In Taylor County?

A. Yes, sir.

Q. You think you were released just prior to October 10th, 1934?

A. I was released in September.

Q. You were in jail for a month, and to your best recollection you were released in September.

Testimony of Alvin W. Kirtley

A. Yes, sir.

Q. Are you married, Mr. Kirtley?

1269 A. Yes, sir.

Q. Where were you born?

A. Taylor County?

Q. When?

A. 1911.

Q. Did you file a questionnaire with Local Draft Board 76?

A. Yes, sir.

Q. Did you report on that questionnaire whether you were married or single?

Mr. Hogan: That's objected to, if Your Honor please?

The Court: I think the credibility of the witness can be attacked. It only goes to his credibility.

Q. Did you report on that questionnaire whether you were married or single?

A. I was single at that time.

Q. You were single?

A. Yes, sir.

Q. When did you marry?

A. 1941.

Q. Where did you marry?

A. I got the license at Harding County.

Q. Hardin County, is that what you mean?

A. Yes, sir.

Q. Elizabethtown?

1270 A. Yes, sir.

Q. Who married you?

A. My father.

Q. Dr. Kirtley?

A. Yes, sir.

Q. To whom were you married?

A. Helen Hogland.

Q. Helen who?

A. Hogland.

Q. How do you spell her last name?

A. H-o-g-l-a-n-d.

Q. H-o-g-l-a-n-d. Where does Helen Hogland live?

A. Her home?

Testimony of Alvin W. Kirtley

Q. Where does she live now?

A. She lives with me.

Q. Is that 1708 S. Fourth Street?

A. Yes, sir.

Q. Who is Beatrice Curry?

A. She is dead.

Q. Who was she?

A. Well, she was a girl that I knew.

Q. Who was Beatrice Kirtley?

A. The same girl.

Q. Were you married to her?

A. No, sir.

Q. When did she die?

1271 A. She got killed in an accident, in 1941, I believe it was.

Q. When, in 1941?

A. I don't remember. It must have been in around April or May, I believe it was, in the spring of the year. She got killed just this side of Frankfort.

Q. The year 1941?

A. I think that was it.

Q. What date were you married?

A. I wasn't married to her.

Q. What date were you married to Helen Hogland?

A. In 1941.

Q. When?

A. October.

Q. October what?

A. October 24th.

Q. Now, when did you file your questionnaire with your Draft Board?

A. My order number was 25. Let's see, I got it, I believe in November.

Q. What year?

A. The first year of the draft. I took the first examine that was given.

Q. As a matter of fact, didn't you get your questionnaire—you registered in October of 1940, did you not?

1272 A. Yes, sir, at the Kentucky Baptist Hospital.

Testimony of Alvin W. Kirtley

Q. And didn't you fill out your questionnaire subsequent to June of 1941?

A. You mean—

Q. With the Draft Board. When did you file your questionnaire?

A. I filed it as soon as I got it and sent it right back in.

Q. When was that?

A. I don't remember the exact date. I was examined. I know it was a few months after that. I was examined in November, of 1940, I believe it was, 1941, the first examine they gave. No, it was January when I was examined for the Army.

Q. What year?

A. Of 1940—let's see, I registered in 1939, I believe it was January of 1940.

Q. You registered in 1939?

A. I registered at the Baptist Hospital in 1940, I guess it was. The first register, I don't—

Q. When you say you registered at the Baptist Hospital, what do you mean by that?

A. When I first signed a card.

Q. When was that?

A. 1940, I believe.

1273 Q. Wasn't it October, 1940?

A. I believe it was, yes.

Q. All right, now when did you file your questionnaire after that?

A. Well, I was examined in January. I guess I filed it along around in November. I was examined in January.

Q. What year, that's what I am trying to get at.

A. 1941.

Q. You think you were examined in January of 1941. At that time, in your questionnaire, did you state under oath that you had never been convicted of a felony?

A. I don't remember that they asked me that.

Q. You don't recall on your questionnaire whether they asked you that or not?

A. No, sir.

Q. You don't recall that.

A. I didn't fill the questionnaire out. I had another

Testimony of Alvin W. Kirtley

fellow fill it out for me. He just asked me the questions and he filled it out and I signed it.

Q. He asked you the questions and you gave him the answers?

A. Yes, sir.

Q. And then you signed it.

A. Yes, sir.

Q. And swore to it, of course.

1274 A. Yes, sure. No, I didn't swear to it. I just mailed it in to them.

Q. Did you or did you not swear to it?

A. No, sir. He was just a friend of mine. He was just helping me fill it out.

Q. I will ask you if on your Selective Service Questionnaire, Question No. 6, you were not asked the question and answered it in this way, "I have not been convicted of treason or of a felony," and was sworn to before Ann Riddlehoover, Clerk, Board 76.

A. That's where I was sworn to, but I don't remember answering the question that way. I don't remember a question in the questionnaire like that.

Q. Where have you lived here in the city?

A. You mean addresses of places I lived?

Q. Yes.

A. I lived at 111 West Hill.

Q. 111 West Hill. When was that?

A. That was, I guess, 1937 or eight.

Q. Which was it, '37 or '38?

A. 1937 and eight.

Q. You lived there two years?

A. No. I moved there along, I think it was in about August of 1937, and lived there until the spring of 1938.

Q. All right, let's go back a little further.

1275 Where did you live in the year 1933?

A. 1933, I believe I was living on Breckinridge, at 117 or 113—117 East or 113 West.

Q. 117 East or 113 West?

A. Yes. I lived at both places, and then I lived at 112.

Q. Wait—that's during the year 1933?

A. I think that's right.

Testimony of Alvin W. Kirtley

Q. Where did you live during the year 1933, 117 E. Breckinridge or 113 W. Breckinridge?

A. Maybe both. I was living with a lady had two houses and I moved from one down to the other one.

Q. What was that lady's name?

A. Hall.

Q. What Hall?

A. Her name is Mrs. Jean Hall.

Q. Now, the year 1934, where did you live?

A. 1934, I believe I was still living with her. I believe I was still living with her in 1934.

Q. How long did you live down there?

A. She had two or three houses and I lived with her.

Q. Did you live first at one house and then the other?

A. Yes, sir. I just had a room there. Sometimes
1276 she would get another house and she would give me a room in another house.

Q. What kind of a house was that?

A. Just a rooming house.

Q. Rooming house?

A. Apartments and sleeping rooms.

Q. During October, 1934, where were you living?

A. October, 1934, I was still living with her on Breckinridge Street.

Q. Where, on Breckinridge?

A. 113 or 117.

Q. You don't remember which one?

A. I believe I was at 117 East.

Q. 117 E. Breckinridge. When did you first use the name Colvin?

A. When I first went to the Ready Cab Company.

Q. When was that, you say?

A. I believe it was in 1933.

Q. That was the first time you adopted the name of Harry W. Colvin?

A. That's right.

Q. When did you first use Harold Colvin?

A. Oh, that was the time that I was arrested on that felony.

Q. You mean you did not give the authorities your

Testimony of Alvin W. Kirtley

1277 right name?

A. No.

Q. You say you did not give the authorities your right name?

A. No, not at that time. I did later.

Mr. Brown: All right, Mr. Kirtley.

Redirect Examination by Mr. Hogan.

Q. Mr. Kirtley, had you ever seen me before October 1, 1943?

A. No, sir.

Q. Had I sent for you?

A. No, sir.

Q. How did you happen to come to me?

A. Well, it just kept bearing on me, and I thought well, I would come down and see you. I saw your name in the paper and I didn't know where your office was. I asked around and found the information where your office was, and I came up to your office.

Q. You mean you saw in the paper after Thomas Robinson, Jr. was brought back here from California to be tried in this court?

A. Yes, sir.

Q. Was that what caused you to come to my office?

1278 A. Yes.

Q. Had you seen that I had been appointed by the court to represent the defendant?

A. Yes, sir.

Q. Did you give me a statement at that time, or did I require you to give me a statement at that time?

A. I gave you the statement.

Q. Was that statement that you gave me on that occasion substantially what you—

Mr. Brown: I am going to object to that. What he has testified here is the important thing. I don't care what statement he made.

The Court: I think he can testify now as to what he saw. What other statement he made at another time I don't think is competent. It is a self-serving declaration.

Testimony of Alvin W. Kirtley

Mr. Hogan: Did I understand Your Honor to say he may say what he said to me?

The Court: He can tell now what the facts are, as to what he saw, but as to what he said to you at some other time I don't think is competent.

Q. Mr. Kirtley, the point I want to make is, whether I took the precaution to find out whether you were telling the truth on that occasion.

Mr. Brown: I object to that. That's purely self-serving.

The Court: Objection overruled.

1279 A. Yes, sir. You asked me two or three times about if that was absolutely right, I believe is the way you put it, if I was certain, or something to that extent, and I said that I was.

Q. Did I not require you to give me an affidavit to that effect?

A. Yes, sir.

Q. I'll show you an affidavit dated October 1, 1943, signed by you, and ask you if that's the affidavit that you gave me on that occasion, the first occasion that I ever saw you, as you said, in your life, and I am sure in mine.

A. Yes, sir.

Q. I will ask you to read that to the jury.

Mr. Brown: Now wait a minute—I certainly object to that.

The Court: Some issue has been raised here as to whether this witness is telling a correct story or not, and I think in justice to Mr. Hogan's position that the affidavit probably can be read.

Mr. Brown: Hasn't he testified to the same thing he has in the affidavit? Have you testified to anything differently, Mr. Kirtley?

The Witness: Not that I know of.

The Court: Let Mr. Brown see the affidavit.
1280 If he wants to agree it is substantially the same as to what you have testified here, there is no need to read it.

(Affidavit handed Mr. Brown for examination.)

Mr. Brown: I think that's substantially the same, what

Testimony of Alvin W. Kirtley

he has testified about.

The Court: It purely goes to the issue, Mr. Hogan, of whether or not he has changed his story since he saw you. If he has testified to those facts once, there is no reason for the affidavit to be read again.

Mr. Hogan: I just wanted my position made clear in this thing, Your Honor please.

The Court: For that reason it may be considered.

Mr. Hogan: That's all.

Recross-examination by Mr. Brown.

Q. Have you seen my name in the paper since 1935?

A. Yes, sir.

Q. You have never felt any urge to come to the law enforcement office of the Government of this district and make this disclosure?

A. Well, I suppose I would have as much as anybody else, if it just hadn't struck me the other way.

Q. Since 1935, haven't you seen that I have been connected with the District Attorney's office?

1281 A. Well, I didn't know how long you had been connected. I knew you were now.

Q. Long before you ever saw Mr. Hogan's name, my name appeared in the paper as United States Attorney, did it not?

A. Yes, sir.

Q. You never felt the urge to come and make these startling disclosures to me.

A. I didn't know who to go to.

Q. So you waited until you could find out who the defendant's counsel was and then you went to him.

A. Not necessarily. I just merely was thinking about it, and I thought I would go and see somebody, and I saw his name in the paper and I just went to him.

Mr. Brown: All right.

The Court: Mr. Kirtley, let me get more definitely when in your opinion you began your jail sentence that you refer to in Taylor County.

The Witness: It was along in August, I believe, up until the term of court.

Testimony of Alvin W. Kirtley

The Court: August, 1934?

The Witness: Yes, sir, I think that's right.

The Court: Until the September term of court?

The Witness: Yes.

The Court: You mean you got out of jail to go
1282 to court?

The Witness: September, it was along about—I believe it was around about the 7th or 8th of September.

The Court: I thought you weren't convicted of a felony until the September term of court.

The Witness: That's when I went to court and was convicted and was released on probation.

The Court: You were released, then, in September, that's your best recollection.

The Witness: Yes, sir.

Mr. Hogan: That's all.

Mr. Brown: That's all.

JOSEPH M. LONG, SR., called as a witness in behalf of the defendant, was first duly sworn, examined and testified as follows:

Direct Examination by Mr. Hogan.

Q. What is your name, Sir?

A. Joseph M. Long.

Q. Senior or Junior?

A. Senior.

Q. Where do you live, Mr. Long?

A. 1022 Marshall Street, Louisville.

Q. Where do you work?

1283 A. Quartermaster Depot, Jeffersonville.

Q. That for the United States Government?

A. The War Department, yes, sir.

Q. In October, 1934, what was your business?

A. I was a Jefferson County police.

Q. Did you have any special assignment during that month?

A. What month was it, sir?

Testimony of Joseph M. Long, Sr.

Q. October, 1934.

A. Yes, sir.

Q. What was that special assignment?

A. At the Stoll home on Lime Kiln Lane.

Q. The Berry V. Stoll home?

A. Yes, sir.

Q. What were you detailed to do at the Stoll home?

A. My partner and I were stationed at the main entrance, at the gate.

Q. Who was or is your partner?

A. Dabney S. Taylor.

Q. Where is he now?

A. I think he is in Africa.

Q. When did you go there?

A. Well, right after the trouble occurred up there. I think it was the following day, if I am not mistaken.

Q. You mean you believe it was—

1284 A. No, I don't think it was the following day.

We searched the neighborhood there for a day or two, the best I can remember. Then a couple days later I was stationed at the entrance of Berry Stoll's home.

Q. You were stationed at the entrance about October 12th, 1934?

A. I couldn't say, sir, as to the correct date, but just a couple days had passed.

Q. Did you stay there until after Mrs. Alice Stoll returned home?

A. I stayed there for sometime after that; yes, sir.

Q. Did you see her after she returned from Indianapolis?

A. Yes, sir.

Q. Did you have a conversation with her?

A. Not by herself. Her husband was with her.

Q. Well, either with her husband or otherwise, did you have?

A. Yes, sir.

Q. What was the conversation?

Mr. Brown: I would like to know when it was.

Q. When was this conversation?

A. I couldn't tell you the date exactly.

Testimony of Joseph M. Long, Sr.

Q. Well, with reference—assuming that she was returned home on October 16th, 1934.

1285 A. Well, it was just a couple days after she had returned home, the best I can remember.

Q. What did she say to you and what did you say to her?

A. Well, I was talking to Mr. Stoll, but I did ask Mrs. Stoll how she felt and she said she felt all right.

Q. What was your conversation with Mr. Stoll?

A. Well, Mr. Stoll and Mrs. Stoll walked around the grounds quite often, and the Federal Agent was usually with her or either Mr. Stoll, sometimes all three of them, and I asked Mr. Stoll some few days later, I don't know just what day it was, how Mrs. Stoll was, and he said she was getting along very nice. He said, "From the experience she had and the excitement, she is doing very well." He says that sometime, I think it was about three weeks previous to the trouble, Mrs. Stoll was feeling awfully bad, said she had a headache she couldn't get rid of, and she was awfully nervous, and he said, "From the excitement it seems like it has cured the nervousness some."

Q. Did you observe Mrs. Stoll's physical condition, yourself?

A. You mean, just to look at her?

Q. Yes.

A. Yes, sir.

Q. What was her apparent physical condition
1286 as you saw her after her return from Indianapolis?

A. Well, she looked to me like she had always looked before that.

Q. Had you seen her before this?

A. Yes, sir, I have seen her before that.

Q. Did she have any bruises that you could see upon her?

A. None that I could see on her at all; no, sir.

Q. Was she complaining in any manner?

A. Not to me, she didn't; no, sir.

Q. Was she complaining to her husband in your presence about anything?

Testimony of Joseph M. Long, Sr.

A. None whatsoever; no, sir.

Mr. Hogan: You may ask her.

Cross-examination by Mr. Brown.

Q. Are you a doctor, Mr. Long?

A. No, sir.

Q. Have you ever gone down to the office some morning just feeling terrible and a casual person meet you and they say, "How are you?" and you say, "I am fine, thank you."

A. Yes, sir; that has happened, that's right.

Mr. Brown: That's all.

1287 Redirect Examination by Mr. Hogan.

Q. Well, did she appear to be in any physical distress when you saw her?

Mr. Brown: I'll object to that. I think he has gone all over that.

The Court: I think you have gone over it once, haven't you?

Mr. Hogan: Not about the physical distress, because he asked him if he had gone to the office—

The Court: Any questions you have overlooked, you can put them in. Just don't repeat the questions.

Q. Did she appear to you to be concealing her real feeling?

A. Well, when I saw Mrs. Stoll, the little I spoke to her, she seemed to be in good spirits. I didn't see anything wrong with her myself.

Mr. Hogan: That's all, sir. Stand aside.

Mr. Brown: That's all.

FOWLER B. WOOLET next called as a witness in behalf of defendant, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Hogan.

Q. What is your name, sir?

1288

A. Fowler B. Woollet.

Testimony of Fowler B. Woollet

Q. And where do you live, Mr. Woollet?

A. 320 N. Thirty-third Street.

Q. Do you rent or do you own your own home?

A. I am buying it.

Q. During the month of October, 1934, by whom were you employed?

A. Berry V. Stoll.

Q. Who is your wife and who was your wife during October, 1934?

A. Ann Woollet.

Q. Was she during that period of time employed by Mr. and Mrs. Berry V. Stoll?

A. She was.

Q. What were her duties?

A. She did household duties there.

Q. What were your duties?

A. Landscape gardening.

Q. Were you employed by the Berry V. Stolls, that is, Mr. and Mrs. Berry V. Stoll, on October 10th, 1934?

A. Yes, I was.

Q. I believe you were not on the premises at the time Mrs. Stoll left there on that day.

A. No, I was not there.

Q. By whom are you employed now?

1289 A. By the Army Air Forces.

Q. You mean, Curtiss-Wright place?

A. No, I am employed by the Army Air Forces. I am not with the Curtiss-Wright Corporation. I am only stationed in that plant by the Government.

Q. You are employed by the Government?

A. That's right.

Q. And how long have you been employed by the Government?

A. Since September 18th, 1941.

Q. Now I believe I called upon you and Mrs. Woollet at your home a few weeks ago.

A. That's right.

Q. About this case, is that correct?

A. That's correct.

Q. Tell the jury whether or not you would furnish me

Testimony of Fowler B. Woollet

with any information or statement concerning the facts of this case.

A. I did not.

Q. You refused to do that, did you not, sir?

A. I did.

Q. Why did you refuse to do that?

A. Due to the fact that I thought it was the proper place to bring out any evidence or any statement here in the court.

1290 Q. All right, sir, with that premise—how long did you work for Mr. Berry V. Stoll after Mrs. Stoll was returned on October 16th, 1934?

A. Approximately five or six days.

Q. Was your wife, Mrs. Ann Woollet, made highly nervous by this excitement out there?

A. She was.

Q. And did she require the attendance of any physician?

A. Yes, sir.

Q. Who attended her?

A. Dr. Shacklette.

Q. From Jefferson town?

A. That's right.

Q. Now I believe you and your wife were questioned considerably by the authorities about this matter?

A. That's right.

Q. Did Mrs. Speed, the mother of Mrs. Alice Stoll, come out to the Stoll home during Mrs. Stoll's absence between October 10th and October 16th?

A. I don't know whether she did or not.

Q. To refresh your recollection, I will ask you if she wasn't there and if she forbade you to make any statement to the police or FBI authorities, or the detectives.

A. No, she did not.

1291 Q. On the evening of October 16th, 1934, what happened to you and your wife, Mrs. Ann Woollet?

A. What date was that?

Q. October 16th, 1934, the date Mrs. Stoll returned.

A. To what extent?

Q. Were you two taken away from the Berry V. Stoll

Testimony of Fowler B. Woolet

estate?

A. Yes, we were.

Q. By whom?

A. By John Tarrant.

Q. The attorney?

A. He was an attorney, yes.

Q. What reason did he assign for removing you and your wife?

Mr. Brown: I don't see what this has to do with it.

The Court: I think that's hearsay again, Mr. Hogan.

Q. Did he take you away from there?

A. Yes, we were taken to the Speed home.

Q. What happened to you at the Speed home?

Mr. Brown: Has that anything to do with this case, Your Honor?

Mr. Hogan: Yes, sir, it sure has. I am leading up—

1292 Mr. Brown: Well, if you lead up to it, you could find out whether it was important or not.

The Court: I expect it is with reference to what Ann Woolet testified to. You are trying to contradict that.

Mr. Hogan: Yes, sir.

Mr. Brown: All right.

Q. Were you taken to the Will Speed home in Louisville?

A. Yes, sir.

Q. You and Mrs. Woolet?

A. That's right.

Q. What was done with you and your wife?

A. Well, we were given a room for the night there.

Q. Where?

A. In the Speed home.

Q. Whereabouts?

A. It was upstairs.

Q. Was it warm or cold there?

A. As well as I remember, the room was evidently cold.

Q. Was your wife hysterical and nervous on that occasion?

A. She certainly was.

Testimony of Fowler B. Woollet

Q. Did you try to get a doctor for her on that occasion?

1293 A. No, I didn't.

Q. Did you ask Mrs. Speed to let you take her to your people, your mother's?

A. Yes. I told her I wanted to leave, I wanted to take her over to my mother's home.

Q. Were you permitted to do that?

A. No, I was not.

Q. Now you stayed there all night, I take it, you and your wife.

A. We did.

Q. The next morning where did you and your wife go?

A. We went back to the Stoll home.

Q. Did you see Mrs. Stoll on that occasion?

A. I saw her for approximately two minutes.

Q. Did your wife see her?

A. Yes, she did.

Q. Did Mrs. Stoll embrace your wife or kiss her?

A. No, she did not.

Q. That did not happen?

A. That did not happen.

Q. Did you hear Mr. Berry Stoll making a phone conversation?

A. No, I did not.

Q. That did not happen, on the morning after—

The Court: No, he said he didn't hear it.

1294 Q. Did you see him using the phone on the morning of the 17th?

A. I don't remember seeing him use the telephone.

Q. To refresh your recollection, I will ask you if you didn't see and hear Mr. Berry Stoll talking to someone over the phone the morning after Mrs. Alice Stoll was returned.

Mr. Brown: I am going to object to that. He certainly can't impeach his own witness. He can show him anything if he wants to refresh his recollection.

The Court: I think he can suggest possibly things that might refresh the witness' recollection, if there is any

Testimony of Fowler B. Woollet

question of his recollection.

Q. And that Mr. Berry Stoll said that she, meaning Mrs. Alice Stoll, his wife, had returned home and had brought home \$25,000.00 with her.

A. I don't remember any conversation like that.

Q. To refresh your recollection, didn't you also hear Mr. Berry Stoll say on that same occasion that the Herald-Post reporters had not acted very nice, that they would gladly see someone killed just to get a good story, but that the Times had cooperated with them very thoroughly--does that refresh your recollection?

A. No, I don't remember anything about that.

1295 Q. Now on Saturday, October 20th, 1934, did anything happen on that occasion that affected you and your wife?

A. On what date?

Q. Saturday, October 20th, 1934. Does the Grand Jury bring to your mind anything that happened on that day?

A. She appeared before the Grand Jury.

Q. Was she ill that morning?

A. She was.

Q. Didn't you request that Mr. Berry Stoll not have her come to the Grand Jury?

Mr. Brown: I submit that is not a function of anybody else, if she had been subpoenaed to appear before the Grand Jury.

The Court: I believe if any protest was made on account of her health that can be brought out.

Mr. Brown: Oh, sure.

Q. Did you protest about bringing your wife to the Grand Jury to testify?

A. I said she wasn't very well and I didn't want her to come, and he said she had been subpoenaed to the Grand Jury and it was very important, and she had to go.

Q. Did she—to refresh your recollection, did he not say she would go even if he had to get an ambulance to take her there?

A. I don't remember that part of it.

1296 Q. At any rate, she was brought down and did testify before the Grand Jury on October 20th, 1934.

Testimony of Fowler B. Woollet

A. That's right.

Q. When did you leave the employment of the Stolls, the Berry V. Stolls?

A. I don't remember what date it was, but it was shortly after my return. I think it was on Sunday.

Q. The next day after your wife appeared before the Grand Jury and testified before that body?

A. I think that's right.

Q. Did you voluntarily leave or were you discharged?

A. I was discharged?

Q. By whom?

A. By Mr. Stoll.

Q. Was your wife likewise discharged?

A. That's right.

Q. Did he assign any reason for your discharge?

A. He was going to close his home up and go away.

Q. Did he do that?

A. Well, I don't know whether he did or not. I have never been back there.

Q. You never have been back there?

A. No.

Q. How long were out of the employment of the Berry V. Stolls?

A. About a year.

1297 Q. Then you did get re-employment with them?

A. That's right.

Q. What time was that?

A. That was in November of 1935.

Q. Do you recall what date that was?

A. No, I don't remember the exact date.

Q. Where was that employment and what were your duties?

A. In Hardyville, Kentucky, as an engineer.

Q. Are you an engineer, Mr. Woollet?

A. I am.

Q. Were you an engineer at the time you worked on the Stoll estate?

A. Yes, sir.

Q. Did you have any difficulty of finding employment

Testimony of Fowler B. Woollet

after you were discharged by Mr. Berry Stoll on October 21st, 1934?

A. Yes, I had my troubles.

Q. Had a lot of them, didn't you?

A. I had several.

Q. Were you able to find other employment?

A. No, I never did get a real good job.

1298 Q. Why?

A. Well people just didn't hire me, that's all.

Q. Did you spend most of the money that you had saved up?

A. I spent all that I ever did save.

Q. You spent all of it following your discharge by Berry V. Stoll. Is that correct?

A. That's right.

Q. Are you acquainted with an attorney by the name of Joseph Hayse?

A. I am.

Q. And his wife?

A. Yes, sir.

Q. Did you and your wife, Ann Hobbs Woollet, ever go to the office of Joseph Hayse and make any statement in connection with the facts in this case?

A. I went to Mr. Hayse, but Mrs. Woollet didn't ever go to his office.

Q. Well did she ever talk to him or his wife at any time?

A. She did.

Q. Where was that?

A. In his home.

Q. And where was his home located?

1299 A. On Confederate place.

Q. And when did you go to see them?

A. I don't recall the month I went to see him in.

Q. Was it not September 1935?

A. It could have been.

Q. Well it was, wasn't it?

A. I don't know definitely.

Q. What was the purpose of your going to Mr. Hayse and his wife? Your purpose and that of your wife

Testimony of Fowler B. Woollet

if you know the purpose, your wife went there for?

Mr. Brown: Let me interpose an objection here for this reason: It hasn't anything to do with the case except to rebut Mrs. Woollet. Now the question was specifically asked whether she had not gone to the office of Mr. Hayse and consulted him as an attorney and Mrs. Woollet, apparently very truthful, said that she had not. But now at the home of Mr. Hayse, I submit that is not competent.

The Court: Mr. Hogan, are you familiar with the transcript?

Mr. Hogan: I asked Mrs. Woollet if she had not September 9, 1935, made a statement—

Mr. Brown (Interrupting): I have it in the transcript here. On page 654:

1300 "I will ask you if it is not true that you went to the office of Joseph Hayse, an attorney of this city, together with her husband, Fowler Woollet, and didn't you consult him about presenting a claim against Mr. Berry Stoll and Mrs. Alice Stoll?"

The Court: Now do you have a transcript that you think is different from that, Mr. Hogan?

Mr. Hogan: What is that page number?

Mr. Brown: 654. Now the next thing is by the Court on pages 656 and 657:

"The Court: What is the date?"

"Mr. Hogan: September 9, 1935. Here in Louisville.

"The Court: Whereabouts in Louisville?"

"Mr. Hogan: In the office of Mr. Hayse."

Mr. Brown: Now that is on page 657.

Mr. Hogan: I have not made a statement—

The Court (Interrupting): Well let's get the transcript.

Mr. Brown: Pages 654, the second question. And if you have found that, the next one is 656 at the bottom of the page, and the next is 657 the first three questions and answers.

Mr. Hogan: What was your second page?

Testimony of Fowler B. Woollet

Mr. Brown: Page 656 at the bottom, where you give the date; and 657 where the Court asked you, 1301 "Whereabouts in Louisville, Kentucky?" And you answered, "In the office of Mr. Hayse."

Mr. Hogan: All right.

Q. Did you consult any other attorney than Mr. Hayse about making any claim against the Berry V. Stolls?

A. She did not.

Q. Did you yourself consult any other attorney than Mr. Hayse about making a claim against the Berry V. Stolls?

Mr. Brown: Now I am going to object to that for two reasons. Unless it is in contradiction of Mrs. Woollet, it has no place in this case. If it—

Mr. Hogan (Interrupting): All right—

Mr. Brown (Continuing): If it is in contradiction of Mrs. Woollet he has answered that his wife did not.

The Court: I don't think there is any testimony of Mrs. Woollet that it contradicts, is there?

Mr. Hogan: It certainly is page 654:

"Did you consult any other attorney in Louisville or elsewhere with reference to making a claim against either one of those Stolls that I have just indicated to you."

The Court: I thought you asked this witness if he had consulted an attorney?

Mr. Hogan: He or his wife.

Mr. Brown: Well, he said his wife did not.

1302 Mr. Hogan: He has not answered it so far.

The Court: You asked him if he did.

Mr. Hogan: Or his wife.

The Court: Well he has answered about his wife; and now I thought you were asking whether he himself did.

Q. Did you do that Mr. Woollet?

Mr. Brown: That is my objection.

The Court: That is the objection. What is that contradictory of?

Mr. Hogan: If Your Honor please I thought I had asked this witness if he had not refused to discuss with me certain facts about this case.

Proceedings

Mr. Brown: You sure did.

Mr. Hogan: Now I have been taken by surprise and I ask—

The Court (Interrupting): Well I don't think you can be taken by surprise when you put a witness on and you don't know what he is going to say. You can prove it by your own witness if you don't know what he is going to say. You take him at your peril.

Mr. Hogan: I know what he said in his statement, if Your Honor please. I would like to be heard upon that because the Chief Justice of the Supreme Court has ruled in a very recent case of Graham and he was sitting specially as a Federal Judge that you could complicate or
1303 impeach your own witness.

The Court: I will be glad to hear you, of course. It is time for the recess anyhow. But doesn't it also raise the question of a privilege communication between attorney and client?

Mr. Hogan: No, sir.

The Court: Wasn't he asking the lawyer about legal advice?

Mr. Hogan: He said he didn't do that.

The Court: Well you are trying to prove that he did, and if he did that is privileged, isn't it?

Mr. Hogan: I want it also for the contradiction of this witness.

Mr. Brown: He hasn't said he didn't confer with a lawyer. He said his wife didn't.

Mr. Hogan: Well let's see about this thing.

Q. Mr. Woolet, did you consult Mr. Dudley Iman about a claim against the Stolls?

Mr. Brown (Interrupting): Well I am going to object to that because it has nothing to do with this case at all.

The Court: What has it got to do with the case Mr. Hogan? We are trying this defendant charged with illegally transporting a kidnapped person in interstate commerce, aren't we?

1304 Mr. Hogan: It shows bias and prejudice upon his part and upon the part of his wife if either one of those talked to an attorney and—

Testimony of Joseph M. Hayse

The Court (Interrupting): Are you showing bias on the part of your own witness?

Mr. Hogan: I think I can do that.

The Court: Can you impeach your own witness?

Mr. Hogan: Yes, sir.

The Court: You put this witness on. This isn't the government's witness.

Mr. Hogan: If you will just let me read the case of Graham I think I can convince Your Honor that I am right.

The Court: All right, I will go and read it with you.

Members of the Jury, we will take a short recess. Do not talk about this case among yourselves or with anyone or allow any one to talk about it in your presence. We will have a ten-minute recess.

The following proceedings were had out of the presence of the Jury and out of the hearing of the Jury in the Court's chambers:

JOSEPH M. HAYSE was duly sworn and was examined and testified as follows:

1305 Examination by The Court.

Q. State your name?

A. Joseph M. Hayse.

Q. What is your age and occupation?

A. 53; lawyer.

Q. How long have you been a lawyer here in the City of Louisville, Kentucky?

A. Since April 1923.

Q. In the general practice of law?

A. In the general practice of law, yes, sir.

Q. Not specializing in any particular one branch?

A. No, sir.

Q. Criminal or civil?

A. No, sir.

Q. Did Mr. Fowler Woollet come to see you either in your office or your home sometime in 1935?

A. In September 1935 Mr. Fowler Woollet and his

Testimony of Joseph M. Hayse

wife—

Q. (Interrupting) Ann Woollet?

A. Yes, Ann Hobbs Woollet came to my office—they either came in or were brought in by someone.

Q. Now, taking it up from that point please detail the circumstances under which they came to you?

1306 Q. What they inquired about and what was their purpose?

A. Well I had been consulted in regard to the Robinson case, and my recollection is that W. K. Powell knew that, and I had discussed it with him. Powell brought these people in and he told me who they were and what he knew, in a general way. And I took their statement and they thought that they had a claim against Berry Stoll at the same time. I took a very thorough statement of the Robinson case and all of its angles and views. There was very little in the statement of Ann Hobbs Woollet and there was very little in the statement of Fowler Woollet that particularly pertains, as I see it, to their own claims against the Stolls. I discussed that with them thoroughly and it was the kind of a case—well I just didn't think there was sufficient merit in it to justify me going into it or trying to handle it.

Q. That is, the claim against the Stoll people?

A. The claim against the Stolls, and I so told them that I was not interested in it and I did not make any contract of any kind with them. They didn't pay me any fee. The first visit was to the office, and I made arrangements with them to come out to my house and Mrs. Hayse took the statement of Ann Hobbs Woollet in her own words and they came back evidently the next night in order to give her time to write it up, and she signed her statement at that time.

1307 Q. There were two or three corrections made in it before she signed it, going over it carefully, and then we took the statement of Mr. Fowler Woollet and he gave that statement.

Q. Well, at the time when you took this statement, the rather full statement that you speak of in your home, did you know and understand that they were advising with you with reference to a possible civil claim which

Testimony of Joseph M. Hayse

they had against either Mr. Berry Stoll or the Speeds?

A. Well, that was part of the consultation, yes, sir.

Q. That was involved in the consultation?

A. That was involved, but that was not all of it by any means.

Q. I know, but that was involved in it?

A. Yes, sir.

Cross-examination by Mr. Brown.

Q. Mr. Hayse, was the statement that Mrs. Woolet gave at your home in Confederate Place where you and your wife were?

A. Well they had given me practically the same statement in my office.

1308 Q. I know, but I am talking about the written statement?

A. The original statement had been taken down at the office but was given to my wife at Confederate Place.

Q. Didn't you have a contingent arrangement with Mr. Woolet that if you took the case after an examination of Mrs. Woolet it would be on a fifty-fifty basis, and if you didn't take the case that there would be no charges at all?

A. Mr. Brown, I don't think we ever got that far in discussing the case.

Q. You did not reach any agreement with Mr. Fowler Woolet?

A. No, sir.

Q. You did not attempt to reach any agreement with Mrs. Ann Woolet?

A. I did not attempt or did not reach any agreement for employment with either one of them.

Q. After you advised them that they had no case, that was the end of it, was it not?

A. Yes, that was the end of it so far as they were concerned. There wasn't anything further to it.

1309 *Direct Examination by Mr. Hogan.*

Q. Did you obtain this statement of Mr. Fowler Woolet and the statement of Mrs. Ann Hobbs Woolet with

Testimony of Joseph M. Hayse

a view to using the information that you obtained thereby in those statements in the defense of Thomas H. Robinson Sr. and Thomas H. Robinson Jr.?

A. Yes, sir.

Q. Had you been consulted by anybody with reference to participating in the making of a defense for Thomas H. Robinson Sr. and Thomas H. Robinson Jr.?

A. Yes, sir.

Q. Upon such time as Robinson Jr. might be apprehended and brought to trial?

A. Yes, sir.

Q. Was that the purpose of obtaining those two statements from the two Woollets?

A. Yes, that was the primary purpose of that. I was very particular to get all of the details into this statement because a very small part of that statement would pertain to any claim that they had against the Stolls. An examination of the statement would show that all of it, practically all of it, was pertaining to the Robinsons.

Q. To the defense of one or both of the Robinsons?

1310 A. Yes.

Recross-examination by Mr. Brown.

Q. Who consulted with you?

A. You mean about employment in this case?

Q. Yes, in the employment in the case of old man Robinson?

A. Mr. Joe Donovan of Nashville. I was handling a case with him at the time. He was associated with Mr. Robinson and knowing that I went to Nashville several times, I had two or three conferences with Mr. Robinson. Then the employment for me did not materialize.

Mr. Hogan: When you say "employment", specify what employment.

Witness: For Robinson.

Q. You were not paid any fee by either Robinson?

A. No fee.

Q. Did Mr. Robinson Sr. himself consult with you?

A. Yes, I had two or three conferences with Mr. Rob-

Testimony of Joseph M. Hayse

inson, I don't remember exactly, at Nashville.

Q. Any fee paid you by Mr. Robinson?

A. No, sir.

Q. Any fee paid you by Mr. Robinson Jr.?

1311 A. No, sir.

Q. And who did you have any conference with about representing him?

A. Mr. Robinson Sr. and Mr. Donovan.

Q. Well, Robinson Jr. was not even apprehended at that time?

A. No, sir, but as I understood him to say, in the event he was captured.

Q. You mean, contemplating a future employment at some time?

A. Yes, sir.

Q. Were you ever approached later, after he was apprehended?

A. It seems that after this Miss Jean Breese—

Q. (Interrupting) Now wait a minute. I mean at the time of his apprehension out here in court?

A. No I was not consulted until after he was brought into court and plead guilty. I mean I was not consulted prior to that, but the conference I had was sometime—I will not say how long because I don't remember—but the consultations with me were not immediately prior to his apprehension and bringing into this court, but I was consulted afterwards.

Q. You mean Miss Breese came to see you?

A. I don't think Miss Breese came to see me. If
1312 she did I don't recollect it.

Q. Who came to see you with reference to that?

A. Well I think I had a further conference with Mr. Robinson Sr. and Mr. Donovan, and I think Mrs. Robinson sat in one of these conferences that was down in Nashville.

Q. That was after Robinson had been sent to the penitentiary?

A. Yes, sir, that is my recollection of the way that was.

FOWLER WOOLET was called as a witness in Chambers by the Court and was examined and testified as follows:

Testimony of Fowler Woodlet

Direct Examination by The Court.

Q. What is your version of the circumstances under which you conferred with Mr. Joseph Hayse, the attorney here, in Louisville, Kentucky?

A. You mean at the time I went to him?

Q. Yes?

A. I wanted him to represent me in a legal claim.

Q. And when was that?

A. I suppose that was in September—I don't
1313 know just exactly what month it was.

Q. Of 1935?

A. Yes, sir.

Q. And with what legal claim were you concerned at that time?

A. We wanted something done in order to get me a job with someone so that every time I went for employment, people wouldn't be saying to me it was up to him to get me a job.

Q. Did you go there as a witness—in order to give a statement as a witness in any criminal proceeding?

A. Did I go to Mr. Hayse as a witness?

Q. Yes?

A. I went there to give him these statements to see whether or not—

Q. (Interrupting) As a litigant or as a witness? Were you giving the statement in your own behalf or were you giving the statement as a witness in a criminal prosecution?

A. No, I was giving it in my own behalf.

Q. I will ask you this, I asked you before the stenographer was here and explained to you the rule of law which allows a client to exercise the privilege against disclosure of statements made to an attorney in the
1314 discussion of a legal matter of his own: Do you wish to exercise that privilege?

A. I do wish to exercise that privilege.

Q. And not have your statement disclosed?

A. I do not want any of them disclosed here.

Testimony of Fowler Woollet

Cross-examination Continued by Mr. Hogan.

Q. Did your wife, Mrs. Ann Woollet, go to Mr. Hayse's office and make a statement at any time?

A. She did not.

Q. Well did she go to the office of Mr. Hayse with you?

A. No, sir.

Q. Did she go to the home of Mr. Hayse?

A. That's right.

Q. Did she make a statement there?

A. Yes she did.

Q. Was that a sworn statement?

A. I don't know whether it was a sworn statement or not.

Q. Did she sign any paper there as her statement?

A. Not that I remember. She might have.

1315 Redirect Examination by The Court.

Q. Did she go with you?

A. She went with me to Mr. Hayse's home.

Q. And on the same matter that you went?

A. That same matter, yes, sir.

Recross-examination by Mr. Hogan.

Q. Did you later go to see Mr. Inman?

A. Yes, sir, I sure did.

Q. Did your wife, Mrs. Woollet, later go to see Mr. Inman?

A. No, sir, she has never been in Mr. Inman's office.

Redirect Examination by The Court.

Q. Was that also about a legal claim of your own?

A. Yes, sir.

Q. Do you wish to exercise your privilege on that?

A. Yes, I will waive that, too.

Q. Do you want it told or do you want it kept confidentially?

1316 A. Just keep it confidential like the other.

Testimony of Fowler Woollet

Recross-examination by Mr. Hogan.

Q. As a result of your visit to Mr. Inman's office, did you procure this later employment with the Stolls in November 1935?

A. Yes, sir.

Q. Were you paid any money by the Stolls?

A. I was not.

Q. Was Mr. Inman paid a fee?

A. He was.

Q. By whom?

A. By Mr. Stoll, I believe.

Q. How much was that fee?

A. I don't remember exactly what the fee was.

Q. Was it \$300.00.

A. I don't know.

Q. In that neighborhood?

A. I would not know how much it was.

Q. How was it Mr. Stoll paid Mr. Inman's fee?

A. Mr. Inman and I had an agreement that when we went into this case that any and all proceeds of the case would be divided between us equally; but it so happened that I got my job back and we ruled at that time that
1317 Mr. Stoll was to pay Mr. Inman's fee and whatever Mr. Inman's fee was I don't know.

Q. Mr. Inman was in private practice then, was he not?

A. Yes, sir.

Q. And he presented for you a claim to Mr. Berry Stoll?

A. That is right.

Q. And was your claim as originally presented to Mr. Inman for money or for some other consideration?

A. I do not know what Mr. Inman asked for.

Q. Well, what kind of a claim did you ask him to present to Mr. Stoll?

A. False imprisonment.

Q. Does that relate to the false imprisonment at the Speed home?

A. That is right.

Testimony of Fowler Woollet

Q. And you thought or maintained that that was false?

A. I absolutely did.

Q. And you still feel that way about it?

A. Well I have no prejudice about it.

Q. Well, not that you have any prejudice about it, but do you still feel that your imprisonment at the

1318 Speed home was false?

The Court: He means in violation of your legal rights.

Witness: I do feel that it was in violation of my legal rights.

Q. Did Mr. Inman or any other attorney make any claim against the Speeds against that violation of your legal rights as you term it false imprisonment?

A. I don't know.

Q. How was it arranged that Mr. Berry Stoll would pay Mr. Inman a fee and give you employment?

A. It was arranged between Mr. Inman and John Tarrant. All I know is that Mr. Inman called me to the office and said Mr. Stoll was willing to give me a job and asked me if I wanted a job and I said that is what I had rather have than anything in the world, and Mr. Inman got the job for me and I went down and went to work.

Q. When was that agreement terminated?

A. In 1935.

Q. When?

A. Shortly after the trial here—in November.

Q. When did you see Mr. Inman about your claim?

A. Right after the trial was held here in 1935—I think that trial was in October and I consulted with Mr.

1319 Inman shortly after that.

Q. You had been to see Mr. Hayse on September 9th or 10th, in 1935?

A. Somewhere in that neighborhood. I suppose it was in that month—I don't remember just what month that was.

Q. Did you or your wife so far as you know have any agreement with Berry Stoll before that trial as to your being given employment after the trial?

A. No, there was nothing in there about employment. He never gave me any agreement to that effect, no.

Testimony of Fowler Woodlet

Q. The agreement was not terminated until after the trial or were you or your attorney having consultations, or had you presented your claim before that trial in 1935?

A. I had not.

Q. Did you consult any other attorney except Mr. Hayse and his wife and Mr. Inman?

A. No; that's all.

Q. Your wife did testify in that 1935 trial of Frances Robinson and Thomas H. Robinson Sr.?

A. Yes, sir.

Q. Did you testify in that trial?

A. No.

1320 Q. Had you talked to Mr. Stoll or had your wife talked to him so far as you know before that trial?

A. No she had not.

Q. Had you?

A. No I had not.

Q. You felt that if your wife cooperated and testified in that trial—

The Court: Well aren't we going rather far afield on the question of privileged communication here? Now I am going to have to hold that it was a privileged communication to both Mr. Hayse and Mr. Inman. It was at least the witness' intention to advise with Mr. Hayse as to a civil matter of his own and for no other purpose.

Mr. Hogan: But as against that, we have Mr. Hayse's testimony to the contrary.

The Court: Yes, it was for both purposes. Even on Mr. Hayse's statement I think it would be held a privileged communication. There was a question of lawyer and client and Mr. Hayse took the opportunity to take a complete statement.

I don't know that a client knows how much he ought to say and how much he ought not to say when he goes to the lawyer and the lawyer starts asking him questions.

Mr. Hogan: Nor does the client and lawyer relationship exist if you never have a contract with him.

The Court: It does when you ask him for advice.
1321 vice. Let the ruling be entered that the Court finds

Testimony of Fowler Woolet

on the evidence produced that the relationship was that of attorney and client and the communications, accordingly, privileges.

The following proceedings were had in open court in the presence and hearing and before the jury:

Direct Examination of Mr. Woolet continued
by Mr. Hogan.

Mr. Hogan: Will the stenographer read the last few questions and proceedings?

(At this point the questions were read:)

"Q. Did your wife consult any other attorney than Mr. Hayse about making any claim against the Berry V. Stolls?

"A. She did not.

"Q. Did you yourself consult any other attorney than Mr. Hayse about making a claim against the Berry V. Stolls?

"Mr. Brown: I am going to object to that, etc."

Mr. Brown: Now I will withdraw my objection.

Q. You may answer, Mr. Woolet?

A. I consulted another attorney.

Q. And who was that other attorney?

1322 A. Mr. Inman.

Q. The gentleman sitting right here?

A. Yes, sir.

Q. Was that in reference to a claim you had against the Berry V. Stolls?

A. Yes it was.

Q. Did he handle that claim for you?

A. Yes, sir.

Q. What was the nature of that claim?

A. It was to represent me in obtaining employment.

Q. Well did you obtain employment as a result of that employment of Mr. Inman?

A. Yes, sir, I did.

Q. Was that employment of Mr. Inman looking to your procuring of re-employment by Mr. Berry V. Stoll or the Stoll Oil Company?

Testimony of Fowler Woollet

A. Yes, sir, Mr. Inman represented me and got the connection made for me.

Q. And as a result of his services you were given employment at Hardyville by Mr. Berry V. Stoll?

A. Yes, sir, that is right.

Q. And how long did you continue in his employment?

A. About two years.

1323 Q. Was any fee paid to Mr. Inman in this matter?

A. Yes, sir.

Q. Who paid that fee?

A. Mr. Stoll.

Q. Mr. Berry V. Stoll?

A. Yes, sir.

Q. Do you know or have you been informed what that fee was?

A. I was informed what it was.

Q. And how much was it?

A. \$100.00.

Cross-examination by Mr. Brown.

Q. Mr. Woollet did your wife, Ann Woollet, at any time ever consult Mr. Inman?

A. No, sir, she did not.

Q. Now you testified on direct examination that you had occasion to see Mrs. Stoll a few moments after your return to the Stoll premises on October 17, 1934. Was that correct?

A. Yes, sir.

Q. Did your wife see her at that time?

A. Yes, sir, she did.

1324 Q. What was Mrs. Stoll's condition at that time?

A. Mrs. Stoll was very nervous and she was shaking all over and she was in her bed in the bed room, and we got out of there as quickly as possible after seeing her.

Redirect Examination by Mr. Hogan.

Q. When did you say you got there, Mr. Woollet?

A. That was shortly after I got there from the Speed

Testimony of Fowler Woollet

home.

Q. Was she too nervous to write?

A. Apparently from the way her hands were shaking I would say she was.

Q. Was she too nervous to initial 94 times her initials on 94 five-dollar bills?

A. Yes it seemed that way to me.

Recross-examination by Mr. Brown.

Q. Now there is another question that I overlooked. Mr. Woollet, when did you first consult Mr. Inman if you recall?

A. Yes. It was right after—let me think
 1325 about that a minute. It was in 1935 that I consulted with Mr. Inman, and I think it was either the last part of October or the first part of November.

Q. With reference to the previous trial that was had in this court of Mrs. Frances Robinson and Thomas H. Robinson Sr., I will ask you if it was after that trial or before that trial?

A. It was after the trial.

Q. And at that time Mr. Inman had no connection with the United States Attorney's Office? He was in private practice was he not?

A. Yes, he was in private practice in the Marion E. Taylor Building.

Redirect Examination by Mr. Hogan.

Q. Mr. Woollet, so far as your employment of Mr. Inman, that was a perfectly legitimate employment by you of an attorney to present what you felt was a legal claim. Is that right?

A. That is right.

Q. Yes.

Mr. Hogan: And I want the record to state that we do not intend any reflection whatsoever upon Mr. Inman's services in connection with this matter, only that
 1326 he served as an attorney in the manner that has just been stated.

The Court: That's a lawyer's business.

Testimony of Alvin W. Kirtley

Mr. Hegan: Yes, sir, that's a lawyer's business to make money and serve clients.

ALVIN W. KIRTLEY was recalled by Mr. Brown and was examined and testified as follows:

Recross-examination by Mr. Brown.

Q. Mr. Kirtley I will show you a selective service questionnaire and ask you to examine that and tell the jury whether you signed that?

A. Yes, sir.

Q. You did, didn't you?

A. Yes, sir.

Q. Now I will refer you to Series No. 11 court record, in which appears "I (and then a blank and then underneath it) have or have not (the next is printed) been convicted of treason or a felony", and I will ask you to tell the jury how you answered that?

A. It is "have not" there. I was convicted but I may have looked over that. I did not mean to answer it
1327 that way.

Q. You mean this was a mistake? A mistake in your answering it?

A. Yes. The other fellow filled it out and I signed it.

Q. That was your statement to him?

A. Yes.

Q. And that shows you have not been convicted of a felony, doesn't it?

A. Yes.

Q. Now let's refer to where it has "Other occupational experience" and instructions, "Every registrant shall fill in this statement, activity in form of apprenticeships served", "I have also worked at the following occupations other than my present job." Now your present job is referred to as the Kentucky Baptist Hospital, 810 Barret Avenue taking care of male patients?

A. Yes, sir.

Q. Now when you were asked to give your prior employment, I will ask you to refer to that and tell the jury

Testimony of Alvin W. Kirtley

from what date to what date you swore to the Selective Service Board you were employed by what concern?

A. Well, it is the Louisville Taxicab Company.

Q. From what year to what year?

1328 A. From 1934 to 1938.

Q. Were you employed by the Louisville Taxicab Company, or were you employed by the Kentucky Cab Company, as you have previously testified?

A. I was employed by both of them that year.

Q. Now look at that questionnaire carefully and tell us where you find the name Kentucky Cab Company on there at all?

A. It isn't on there.

Q. You recalled that you had been employed by the Kentucky Taxicab Company at the time you swore to that, didn't you?

A. Yes, but the way I understood it, it just meant so many years. It didn't matter where you had worked.

Q. But for the years 1934 to 1938 you show there that you were employed by the Louisville Taxicab Company. That is the Yellow Cab Company isn't it?

A. Yes, I left the Kentucky Cab Company in the fall of 1934 and went to the other.

Q. Now we will refer to this again. The first page "identification". "Every registrant shall fill in all questions in this series. My name is —", and what have you printed there?

A. Alvin Whitfield Kirtley.

1329 Q. "In addition to the name above given, I have also been known by the name or names of—" and what is there?

A. Not any.

Q. That is blank, isn't it?

A. Yes.

Q. Although at that time you were known by the name of Harry W. Colvin, Harold Colvin, and Alvin W. Kirtley.

A. The way I understood it, they were just wanting a record of my right name in the record.

Q. Well when it says "In addition to the name given above I have also been known by the name or names of

Testimony of Alvin W. Kirtley

—"you did not disclose that, did you?"

A. No, sir, I did not.

Q. I will ask you if this entire questionnaire was not signed and sworn to by you, your signature appearing, "Alvin Whittfield Kirtley, Subscribed and sworn to before me this 12th day of November 1940, Ann Riddlehoover, Clerk, Board No. 76." Now you signed and swore to that, didn't you?

A. Yes, sir, I took it down to Board 76 and this lady told me to sign it and I signed it and gave it to her.

Q. And you also swore to it at that time?

A. She just asked me to sign it.

1330 Q. Didn't she also ask you to swear to it?

A. I didn't understand it.

Q. You mean you do not understand what you are saying sometimes?

A. No.

Q. You mean you do not understand what you are signing sometimes?

A. Yes I do.

Q. You did not look at it before you signed it?

A. I didn't pay much attention. I had a man fill it out for me.

Q. You filled it out to the best of your ability or gave your friend the answers to fill out to the best of your ability?

A. Yes.

Redirect Examination by Mr. Hogan.

Q. That is a rather complicated set of questions contained in that questionnaire?

A. Yes, sir, it is awfully hard. Most people used to have an attorney or somebody fix them out for them.

1331 Mr. Hogan: If Your Honor please, I have a part of an exhibit here. It will take about ten minutes to assemble it. During that time, I think it is proper to ask the Court to admonish the jury about the effect of the contradictory statements of this witness Kirtley, as to the effect of them.

The Court: Members of the jury, when a witness tes-

Proceedings

tifies, his credibility is always a question for the jury, and either side has a right to test or attack the credibility of a witness for the opposing side. Contradictory statements may be introduced for that purpose and bear on the question of the witness' credibility, that is, as to how much of his story you believe, whether you think he is entitled to be believed a hundred per cent or whether you think there is some doubt or question as to the story as he is giving it to you. The evidence which went to the fact that this witness has previously made contradictory statements with reference to his questionnaire and other like matters bear entirely on his credibility as a witness. So it will be considered by you only in that respect.

Mr. Brown: That is true also as to the conviction of a felony.

The Court: Yes. There has also been some evidence that he had been previously convicted of a felony. Such evidence is directed only as to his credibility. The
 1332 fact that a man has been previously convicted of a felony can be considered by you only in that connection in determining whether or not you believe the story he told you from the witness-stand. Such evidence is to be considered by you only in that connection and in that respect, as bearing on his credibility as a witness.

Mr. Hogan: Now if Your Honor please, I mentioned an exhibit, it will take probably ten minutes to assemble it. I wonder if we couldn't have a little recess.

The Court: That takes us to the adjournment hour. Mr. Hogan, and I expect we will all be ready to adjourn by then. Will you be ready to proceed in the morning at 9:30?

Mr. Hogan: It won't take long to proceed with this exhibit. It is hardly 5:00, and I would like to have it introduced here. I think we can get it by 5:00 o'clock.

The Court: I have had lawyers tell me before it won't take any time to do it. I had a case the other day when the lawyers were going to finish it in two hours. It took a little over a day to get through with it. I don't believe it would be safe to rely upon getting through with that exhibit in ten minutes, and I promised all of you gentle-

Proceedings

men when we were arranging the time that we would quit sometime between 4:30 and 5:00 each day. I think each day we have gone the full limit. It is ten minutes
1333 of 5:00 now.

Mr. Hogan: I think a little rest will do us all good.

The Court: Members of the jury, we will accordingly adjourn then until tomorrow morning at 9:30. During this intermission, remember the Court's admonition as at other times. Particularly as we are nearing the closing of the case, I want to urge upon each of you more strongly, do not consider this matter with anyone or discuss it with anyone, or allow anyone to talk about it to you or in your presence.

We will convene tomorrow morning at 9:30.

An adjournment was thereupon taken to Wednesday morning, December 8th, 1943, 9:30 a.m.

1334 Court convened at 9:30 a.m., December 8th, 1943, pursuant to adjournment, without a jury, and the following proceedings were had:

The Court: I wish to announce to the defendant, the attorneys and parties present, that I have been advised by the marshal in charge of the jury that two of the jurors are temporarily indisposed this morning and are awaiting some attention from a doctor. It is thought possible that they will be ready to resume their place in the jury-box by the usual afternoon session at 2:00 o'clock. Accordingly, the further taking of testimony will be continued until 2:00 p.m. this afternoon.

Mr. Brown: Your Honor, at this point, outside of the presence of the jury, I want to make an objection to this exhibit which has been put up in this court room. Obviously, it does not duplicate the situation that existed in Indianapolis. Now, if this defendant or his counsel wants to introduce someone to crawl through that window, if this defendant or his witness will hit that person twice over the head with an iron pipe, will bind and gag them and carry them for a period of hours in an automobile, keep them in a closet, bound and gagged, for any period time, show that it was opaque glass on the window; there

Proceedings

was a screen in the window in the Indianapolis apartment there were no steps, of course, in the Indianapolis apartment, inside or out to simulate that condition. **1335** then possibly this exhibit would be admissible. In the condition it is in before it has been introduced into evidence, I think it is highly prejudicial to allow this exhibit to be in the court room when there is no pretense at simulating the same conditions.

I make the further objection that apparently Mr. Hogan has adopted two theories in this case in preparing this exhibit. If he adopted the defendant's theory of the evidence there would be no need for this window at all because Mrs. Stoll could have walked out the door at any time, and obviously she would never have climbed out of the window if she could have walked out of the door. If you adopt the Government's theory, and as the evidence shows, this exhibit, of course, is not conducive to show anything unless we also have the surrounding conditions that were present in the case of any witness that is introduced here.

The Court: What are the steps, Mr. Hogan?

Mr. Hogan: That's just merely so that a person who demonstrates can approach the window.

The Court: There were no such facilitation for Mrs. Stoll, was there?

Mr. Hogan: No, there wasn't, and, of course, we had the witness Johnson who said he went through the windows, similar windows to this, many, many times.

Mr. Brown: With a ladder. With a ladder.

1336 Mr. Hogan: He did not say ladder.

The Court: He went from the outside in, didn't he, not from the inside out?

Mr. Hogan: He went through the window.

The Court: From the outside in.

Mr. Hogan: Yes.

Mr. Brown: With a ladder. With a step-ladder, which is in the record and which I very carefully checked before I made my objection.

The Court: I would think from what I remember of the evidence, that the steps would not be a proper part to put there regardless of anything else. Certainly there

Proceedings

weren't any steps in the bath room leading up to the window.

Mr. Hogan: No, there were not. The purpose of it is to show that a person of Mrs. Stoll's body or a person of that build or stature could go through that opening.

The Court: Under the conditions that existed in the bath room without steps to help them. They didn't have steps to help them.

Mr. Hogan: No, sir.

The Court: I would think the steps should be removed.

Mr. Hogan: We will, if Your Honor so rules, remove the steps and simulate the condition that existed.

1337 The Court: How about the height of the window from the floor?

Mr. Hogan: The height is the same.

The Court: The height to the sill of the window there is the same distance from the floor as it was in the bath room?

Mr. Hogan: Yes, sir.

The Court: The size of the window the same?

Mr. Hogan: Yes, sir.

The Court: The glass the same?

Mr. Hogan: The opening is the same.

Mr. Brown: No, sir, the glass is not the same. The screen is not in.

The Court: Wasn't it important that she said, as I remember, that she didn't know what was on the outside of that window?

Mr. Brown: Absolutely.

Mr. Hogan: The testimony was, she said when they raised and lowered the window—

Mr. Brown: No, she did not.

Mr. Hogan: It could have been raised and lowered.

Mr. Brown: No, she did not.

Mr. Hogan: Johnson did.

The Court: Johnson was a very different man
1338 from Mrs. Stoll.

Mr. Hogan: He was a Government witness.

The Court: I know, but their physical condition is much different. Johnson is a pretty husky looking fellow.

Proceedings

He was the one that did everything that had to be done around the place, wasn't he?

Mr. Hogan: Yes, sir, he is the fellow.

The Court: Mrs. Stoll, of course, is a slight woman. Whether she could get through the window is entirely different from whether Mr. Johnson could get through the window. I think one of the features was that Mrs. Stoll claimed that she didn't see through the window, couldn't see through the window, she didn't know where she might be after she got through the window, if she even tried to.

Mr. Hogan: The point is, she could have raised the window and looked out.

The Court: Maybe she could and maybe she couldn't. It was above her height, wasn't it?

Mr. Hogan: No, sir.

The Court: I don't know whether it was or not.

Mr. Hogan: Well, I will tell Your Honor it is forty-seven and a half inches, and she said she was five feet three.

The Court: I imagine that that defect could be cured by putting paper over the windows or something to
1339 that effect, to show that the windows were not transparent.

Mr. Hogan: Yes.

The Court: Was there a lock on it? There isn't any lock on this, is there?

Mr. Brown: And I want a screen in the window.

Mr. Hogan: There is no testimony that there was any screen.

Mr. Brown: Oh, yes, there was, too. We introduced a picture.

The Court: You all check on the testimony. I think that the exhibit ought to very closely comply with the evidence as to what that window was. It wouldn't do any good to put in an exhibit for the purposes that you are going to put it in where the conditions surrounding it are materially different.

Mr. Hogan: If you feel it is necessary, we will put a screen in it.

The Court: Get this transcript and see whether it says there was a screen in the window. You gentlemen

Proceedings

can read it. I don't remember whether it said it had a lock on it or not.

Mr. Hogan: No, there was no testimony about any lock.

The Court: What is your recollection, Mr. Brown, on the question of the lock?

1340 Mr. Brown: Yes, there was not only testimony, but there was a picture of the lock which we introduced.

The Court: I don't know whether you have to get priorities these days to get a lock or not.

Mr. Hogan: I think you do.

The Court: Maybe you can make one out of plastic of some kind which for the purposes of appearance will do just as well. I think if there was a screen, that the screen ought to be shown in the window or on the outside of the window. Of course, the dimensions of the window should be carefully checked, the height of the window from the floor. That will give you lawyers something to do this morning while the court is in recess, to check that and see that it is correct.

I am not going to have any woman hit with a pipe in order to make the exhibit competent. I am afraid you might have trouble getting volunteers, but, of course, that fact can be brought out, that whatever condition surrounded the window in the bath room at the time certainly ought to be before the jury. I believe, Mr. Brown, that if we get the physical aspects of the window fairly accurate, that it would probably be admissible.

Mr. Brown: Oh, yes, I am sure.

The Court: You don't insist upon a woman being hit with a pipe.

1341 Mr. Brown: No, sir. I don't know that I can reasonably insist, being a government officer.

The Court: And I think certainly the steps ought to be removed. Now the only purpose of the steps was to help someone to get up to that window to get through.

Mr. Hogan: That's right.

Mr. Brown: Yes, that was the purpose of it.

The Court: Then I don't think the jury ought to see

Proceedings

the steps even, do you?

Mr. Brown: No, sir.

Mr. Hogan: No, we will remove the steps. I think even Mr. Brown could get through that window.

Mr. Brown: I doubt it, even with the steps.

The Court: I imagine he would have an awful lot of trouble trying it this morning.

Now, are there any other matters to be taken up about that window?

Mr. Brown: No, sir, after it is corrected in the manner you have indicated, we will have a look at it before the jury gets back and then we probably can agree for what it is worth it can go in.

The Court: All right, if there are no other questions to be discussed then, we will adjourn to 2:00 o'clock.

An adjournment was thereupon taken to 2:00 p.m. of the same day.

1342 Met, pursuant to adjournment, at 2:00 o'clock p.m., Wednesday, December 8, 1943, and the following proceedings were had:

The Court: It has been made known to the Court that the juror, Mrs. Davidson, has become ill and is unable to continue with her duties as a juror. The doctor advises the Court that she is in bed and unable to attend any sessions today. It is problematical whether she would be able to continue tomorrow or not.

Accordingly, under the provisions of the statutes, due to her illness and her inability to attend as a juror, she will be discharged as a juror and the one alternate who was sworn will take her place as the remaining juror in the box.

Let an order be entered to that effect, Mr. Clerk.

(At this point the alternate takes the box.)

The Court: I understood by both counsel that the alternate was duly sworn at the beginning of the case.

Mr. Brown: Yes, Your Honor.

Mr. Hogan: Yes, Your Honor.

The Court: Are you ready to proceed, gentlemen?

Mr. Hogan: Yes, sir.

Testimony of Fred Smith

1343 FRED SMITH was called as a witness by the defendant, and after having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Hogan.

Q. What is your name?

A. Fred Smith.

Q. What is your business or occupation?

A. Carpenter.

Q. And how long have you been such?

A. I would say about 8 or 10 years.

Q. Have you had much experience in the construction of homes and buildings?

A. Yes, sir.

Q. Have you built any house or helped to construct them?

A. Both.

Q. Did you prepare, at my instance and direction this exhibit which is before the Court here?

A. Yes, sir.

Q. Tell the Court what that consists of?

A. The measurements, you mean?

Q. Yes?

A. It is 5 by 20 open. The glass is 16 by 16. The height is 47½.

1344 Q. Now have you made any tests, Mr. Smith, with this lower window open to determine the space there when that lower window is raised?

A. Yes, sir, it is 15 inches high.

Q. By what wide?

A. 20.

Q. And what height is that window from the floor?

A. 47½.

Q. And what else is there stationed there in connection with that exhibit?

A. I didn't measure the height on that.

Q. Well what is that there?

A. It is a stool, toilet stool.

Q. Is that the usual and customary toilet stool found in homes and apartments?

Testimony of Fred Smith

A. That is right.

Q. Does the window have a lock in it?

A. Yes, sir.

Q. Does it have a brass handle with which to raise the window from the inside?

A. It does.

Q. Does it have a screen on the outside with hooks that fasten on the inside?

A. That's right.

1345 Q. May those hooks on the screen be loosened from the inside?

A. Yes, sir.

Q. Is that window capable of being raised and lowered?

A. Yes, sir.

Mr. Brown: No questions.

Mr. Hogan: If Your Honor please, I will have to offer myself as a witness for the purpose of connecting up these exhibits.

Mr. Brown (Interrupting): That will not be necessary.

Mr. Hogan (Continuing): That these measurements are what I found to be in the apartment.

Mr. Brown: If you say they are, I will agree to that.

The Court: I believe you all agreed on that this morning.

MARJORIE KIRCHHUBEL was called by counsel for the defendant as a witness and, after having been first duly sworn, was examined and testified as follows:

1346 Direct Examination by Mr. Hogan.

Q. What is your name?

A. Marjorie Kirchhubel.

Q. Where do you live.

A. 2144 Gaubert.

Q. By whom are you employed?

A. The L. & N. Railroad.

Q. What is your height?

Testimony of Marjorie Kirchhubel

A. Five feet three inches.

Q. What do you weigh?

A. About 119.

Q. Now, Miss Kirchhubel, I will ask you to come before this jury and demonstrate, or attempt to raise the window, stand upon the toilet seat and see if you are able to raise the window and push the screen out and go through that window from the top of that toilet seat?

Mr. Brown (Interrupting): Now wait just a moment. I do not recall any testimony that Mrs. Stoll was wearing slacks; or that she was attired in any way resembling this witness. I think the testimony definitely shows that she had on high-heeled shoes, from Sachs, 6AAA.

Mr. Hogan: There is no testimony to that effect.

Mr. Brown: Yes there is.

1347 The Court: Well the way to find out is to look at the transcript.

Mr. Brown: That is how she gave the information to Robinson to have Miss McHenry identify her.

The Court: You gentlemen both have the transcript. Suppose you get it out and look at it.

Mr. Hogan: Well, I submit that that really is not important anyway because this witness is of the size and stature of Mrs. Stoll.

The Court: Well, you didn't expect her to change from a dress into slacks in there if she didn't have slacks, did you?

Mr. Hogan: No, but—

The Court (Interrupting): But here is the point, in the condition that she was in then, she could get out, isn't it?

Mr. Hogan: Yes.

The Court: Then you will have to have someone in her condition.

Mr. Hogan: But it doesn't make any difference whether she had on a dress or whether she had on—

The Court (Interrupting): I think that is rather material.

Mr. Brown: I have examined the transcript and
1348 there is no doubt but what she had on a dress, high-

Testimony of Marjorie Kirchhubel

heeled shoes, Sachs 6 AAA.

The Court: Well, let the witness be attired in a similar way in which Mrs. Stoll was attired.

Mr. Hogan: Well, we will postpone the demonstration until we can get the demonstrator attired in that same manner then if that is what the prosecution wants.

Mr. Brown: No, I don't want it.

The Court: Well I think that's proper. (To the witness): Have you any high-heeled shoes?

Witness: Not with me.

The Court: How long will it take you to get them?

Witness: I could get home and back here in about a half an hour.

Mr. Hogan: And bring a dress.

WILLIAM K. POWELL was called by counsel for the defendant as a witness and, after having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Hogan.

Q. What is your name?

A. William K. Powell.

1349 Q. Where do you live?

A. 3019 Greenwood.

Q. Were you ever employed by the Louisville Police force?

A. Yes, sir.

Q. For what length of time?

A. About 16 or 17 years.

Q. What were your duties in connection with that position?

A. Well I was patrolman, I was a Sergeant Police and I was a Detective.

Q. Do you know Mrs. Ann Woollet?

A. Yes, sir, I met her.

Q. During the year 1935 did you meet her?

A. Yes, sir.

Q. Tell the circumstances of your meeting her?

Testimony of William K. Powell

A. Well it is a sort of a long story—it was through her mother-in-law, Mr. Woolet's mother.

Q. What was the occasion of Mr. Woolet's mother making you acquainted with Mrs. Ann Woolet?

A. She had them to—

Mr. Brown (Interrupting): I don't want him to detail any conversation.

Q. No, don't detail any conversation. Well, did
1350 or not on or about September 9, 1935, Mrs. Ann Woolet come to your home and have a conversation with you?

A. Yes, sir.

Q. Tell the Court what she said?

Mr. Brown: Now I will object to that. There was no foundation laid for any statement that she made at any time.

The Court: This would be to contradict Ann Woolet, would it not?

Mr. Hogan: Yes, sir.

The Court: What point or what question is it that you wish to contradict? Get the transcript on it.

Mr. Hogan: I asked her if she made certain statements and she said she had not.

(At this point counsel have a conference with the Court at the bench.)

The Court: Objection sustained in that the definite part of the conversation should be referred to which might be the basis for contradiction of the witness, Ann Woolet.

Mr. Hogan: Exception.

Q. Now did Mrs. Ann Woolet ever have any discussion with you as to whether or not she felt aggrieved or that she had any claim against either Mrs. Alice Stoll or Mr. Berry Stoll?

1351 A. No, sir, there was nothing said that day.

Q. What was the gist of her conversation with you on that day?

Mr. Brown: I object to that.

The Court: Now we are not going into the gist of the conversation. You are trying to contradict any statement that Ann Woolet said. You gave me the direct statement

Testimony of William K. Powell

you wanted to contradict and that you wanted to ask him about. Now if you want to call that to his attention, you can. Let's don't go into any general gist of any conversation.

Q. Well did Mrs. Woollet consult an attorney in your presence about this grievance she had against Mr. Stoll or Mrs. Stoll?

A. She never said anything about any grievance. She consulted or talked to an attorney—

The Court (Interrupting): Now were you present?

Witness: Yes, sir.

The Court: All right.

A. (Continuing) About what happened.

Q. Did she tell you what happened?

A. Yes, sir.

Q. And now don't answer this question until the Court rules on it. What did she tell you happened?

The Court: Oh, no. Ask him if she made such and such a statement. That's what you want to direct his
1352 attention to.

Q. I will ask you if in your presence Mrs. Ann Fowler on that occasion made this statement?

Mr. Brown: Now I want to inquire into this a little more before this question is answered. Mr. Hayse testified nobody was—what attorney was it, Mr. Powell? What attorney was it?

Witness: Hayse—Mr. Joe Hayse.

The Court: Where?

Witness: At my house.

The Court: Where was that?

Witness: At 3019 Greenwood.

The Court: Louisville, Kentucky?

Witness: Yes, sir.

The Court: When?

Witness: About the 8th or 9th of September of 1935.

Mr. Brown: That is directly contrary to what Mr. Hayse said yesterday.

The Court: Was Mr. Hayse present then?

Witness: Well, Judge—

The Court (Interrupting): Well was he or was he not?

Testimony of William K. Powell

Witness: He was present and heard her say—she talked to me—

1353 The Court (Interrupting): Well now never mind what he heard—I was just asking you if he was present. Was he present then?

Witness: Yes, sir.

The Court: All right, go ahead and ask your questions.

Q. I will ask you if on that occasion Mrs. Woollet didn't say these words, meaning Mrs. Stoll—

Mr. Brown (Interrupting): I don't want any meaning. I want to know what she said.

Mr. Hogan: All right.

Q. (Continuing) "She (meaning Mrs. Stoll—

Mr. Brown (Interrupting): Now I am going to object to that unless she said "meaning Mrs. Stoll".

The Court: Well I expect the context shows what the reference is to.

Mr. Hogan: That is correct, Your Honor.

The Court: Let the record show that the reference by the attorney means she referred to Mrs. Stoll.

Q. (Continuing) "She didn't look at him mean or anything, but just looked at him. I suppose you would call it a faint smile but didn't crack her face."

Mr. Brown: Now I am going to object to that, on this ground, that he was limited as to going into the question of grievance. Now what has that to do with grievance on the part of Ann Woollet?

1354 The Court: I think Mr. Hogan asked Ann Woollet all of those questions, one right after the other, and she said she didn't remember, is my recollection of it.

Mr. Brown: And Mr. Hogan also asked and said, "Didn't you go to the office of Mr. Joe Hayse?" "Didn't this happen in the office of Mr. Joe Hayse?" And Mr. Hayse yesterday also said it happened in the office of Mr. Joe Hayse. Now I submit he is trying to show something that happened at 30-something Greenwood Avenue for which no foundation whatsoever has been laid; and Mrs. Woollet's attention certainly was not drawn to Mr. Powell or anything on Greenwood Avenue.

The Court: Look back in your transcript and see if

Proceedings

this happened at Mr. Hayse's home rather than on Greenwood Avenue. And for the purpose of the record, counsel can agree, I suppose, that Conferdate Place and 3019 Greenwood is several miles apart?

Mr. Hogan: Yes, Your Honor.

The Court: I believe that appears right at the part where you began to read from that typewritten sheet that you had. You laid your basis right then, Mr. Hogan.

Mr. Hogan: I am trying to find that place, if Your Honor please.

Mr. Brown: That he said in the presence of
1355 Mr. Hayse and Mrs. Nellie Stoeß Hayse, his wife—

The Court (Interrupting): Just a minute. Now let me announce to all of the spectators present, as I have announced two or three times before, unless you are willing to stay in the court room while the witness is on the stand, please don't come in the court room. We have to stop this running in and out of the court room while the witness is testifying. It is disconcerting to the witness and to the parties and to everyone and to everyone concerned in trying to handle this trial. When a witness is on the stand, don't come in. Don't try to get up and leave while a witness is on the stand giving his testimony.

Mr. Hogan: Now here is the point in the testimony.

Mr. Brown: I suggest we step up to the Judge's bench.
 (Counsel and the Court have a conference at the bench.)

Mr. Hogan: (After conference) I will make an avowal that if the witness were permitted to state—

Mr. Brown (Interrupting): Wait a minute. We are not going to have any speech right here before the jury.

Mr. Hogan: I will make it out of the hearing
1356 of the jury. We can go out of the room because Mr. Powell has a deep voice.

The Court: Just a minute. Now are you going to ask this witness any other questions and make any other avowal?

Mr. Hogan: No, I don't think so.

The Court: If so, let's make them now so we will not have to be running back and forth every time you make an avowal.

Testimony of William K. Powell

Mr. Hogan: I will ask him some questions now.

The Court: I mean, on the rebuttal phase of it?

Mr. Hogan: No.

The following testimony was taken out of the hearing and out of the presence of the jury by counsel for both sides before the reporter:

Direct Examination by Mr. Hogan.

Q. Now, Mr. Powell, did Ann Woollet on that occasion and in your presence and hearing and to you say these words or words to this effect:

"About this time she calls me up there and wants me to bring her some pumpkin seed, and I took them up there and Robinson comes up and smiles at her (meaning Mrs. Alice Stoll). I thought it was just politeness then."

Did Mrs. Woollet make that statement to you?

1357 A. No, she did not say it that way.

Q. Then how did she say it?

A. She said she went upstairs for seed or something. I think she said she was making pumpkin pie and she said Mrs. Stoll said to save her some pumpkin seed.

Q. Did she on this occasion (meaning Mrs. Fowler Woollet or Mrs. Ann Hobbs Woollet) say to you on this occasion at your home at 3019 Greenwood Avenue, in Louisville, Kentucky, these words, or words to this effect:

"She didn't—"

Witness: Can't I just tell you gentlemen?

Mr. Brown: Yes.

Mr. Hogan: Just tell the story.

Witness: Let me tell you all.

Mr. Brown: Talk so the stenographer can hear you.

A. Like she was telling me—

Q. (Interrupting) When you say "she" say whether it was Mrs. Stoll or Mrs. Ann Woollet.

Mr. Brown: Or any other person.

A. I would like to explain why she came there and

Testimony of William K. Powell

what she was doing there.

Mr. Brown: All right, explain it all.

A. I got her husband a position, or job, and they came there and told me about how the Stolls had treated
1358 them.

Q. You are referring to Mr. and Mrs. Stoll?

A. That was Mrs. Ann Woollet and her husband was with her. Foster I think his name is.

Mr. Brown: Fowler Woollet.

A. Yes, Fowler Woollet. And she commenced telling me—

Mr. Brown (Interrupting) Let me interrupt you. Was Mr. Joe Hayse there at that time?

Witness: No, sir.

Mr. Brown: All right; go ahead.

A. The mother, Woollet's mother, had told me about this and about them not having no job, and she began to tell me about being there and that their attorney, Stolls' attorney, came and called them and told them that they had to go over to Mrs. Speed's and stay all night, that Mrs. Stoll was coming home, and they kinda objected—

Q. (Interrupting) Who do you mean, "they"?

A. The Woollets—Woollet and his wife.

Q. Ann Woollet?

A. Yes. And they taken them over to Mrs. Speed's and left them over there all night out in a house in the yard, she says. And the next morning Mrs. Speed came and told them that they could go back home, and she had called a taxicab and the cab came and they took

1359 them back. She says when they got there Mr. Stoll, the husband of Mrs. Stoll, and a federal man was in the yard. They drove up and got out and Mr. Stoll met them and told them that he didn't want them any more, that he had discharged them, and Woollet then asked about what was he going to do and he says "Close the house up or give it away, I am not going to stay here." And Ann Woollet says, "I would like to see Mrs. Stoll and tell her good-bye." And Mr. Stoll said, "The doctors have refused to let anyone see her." She said about that time Mrs. Stoll came from over the hill back of the

Testimony of William K. Powell

house with a gun on her shoulder, with two or three dogs following her, and that she ran up and grabbed her and kissed her.

Q. Who ran up?

A. Mrs. Stoll.

Q. And grabbed who?

A. Mrs. Woolet, and kissed her.

Q. Did Ann Woolet tell you anything else about this matter you are talking about?

A. Yse, sir. She said that when he came there—it seemed as if the telephone was out of order and he came there—

Q. (Interrupting) “He”? Who was “he”?

A. Robinson. It seemed as if Stoll’s telephone **1360** was out of order and Robinson came there as the man to fix it—the repairman. And she said she didn’t know whether her or Mrs. Stoll opened the door, but Mrs. Stoll says, “What are you doing here?” And he says, “I have come after you.”

Q. All right, go ahead.

A. Ann says, “They went upstairs and were upstairs quite a while and I was in the basement ironing.”

Q. Who was upstairs quite a while?

A. Mrs. Stoll and Robinson. And that she was in the basement ironing, and that she went upstairs and asked Mrs. Stoll if he could fix it and Mrs. Stoll said, “He thinks he can if you will help him. He wants you to hold the wires.” And she said, “He came up close to me and grabbed me and fastened my hands to a chair.” And she said they left.

Q. Who is “she”?

A. Ann Woolet.

Q. Says who left?

A. Mrs. Stoll and Robinson.

Q. All right. Where did they go? Where did she tell you they went?

A. She wiggled her chair to the window—seemed like she was in the middle of the room somewhere and she got to the window where she could see out and they **1361** got in the automobile and drove off and that it was

Testimony of William K. Powell

about ten minutes before Mr. Stoll came home.

Q. Did Ann Woollet tell you anything about Ann Woollet cleaning up Mrs. Stoll's bedroom?

A. Yes, sir, she says she went upstairs to clean the room up, either the first or second morning after Mrs. Stoll had come home, and she raised a pillow and there was a large bundle or amount of money there, and also in a chair and she said it kinda excited her, and she saw so much money she didn't know what about it.

Q. Did Ann say whether or not Robinson hit Mrs. Stoll on the head with a pipe or a blunt object?

A. No, sir, she did not say anything about that.

Q. Did she say anything about any blood around the place there when Mr. Robinson and Mrs. Stoll left?

A. No, sir.

Q. Did Ann ever say anything to you about her off days?

A. Yes. It seemed as if Ann had a day off a week, and Mrs. Stoll would bring her to town in Mrs. Stoll's car, and they would go to the Second and Broadway to Stoll's Filling Station and park the car and go inside the office and sit down and she would tell Ann a certain hour to be back and she would call a friend up—

Q. (Interrupting) Who is "she"?

1362 A. Mrs. Stoll. She would call a friend up out on Third Street to meet her there.

Q. Did she say anything about Robinson being in the station?

A. He was the attendant, she said.

Q. Did she say whether or not Mrs. Stoll knew or talked to Robinson on those occasions?

A. She said she would go in and park her car and he would be there and they would go into the filling station, and Mrs. Stoll would tell her about being there a certain hour and—

Q. (Interrupting) Did Mrs. Ann Woollet ever say to you that Mrs. Stoll talked to Robinson at the filling station?

A. No.

Q. Did she say she saw him there?

Testimony of William K. Powell

A. Yes, she said she saw him there.

Q. Did she tell you whether or not Robinson ever parked Mrs. Stoll's car for her?

A. No. She said they would drive in there and park and go out and go in the office.

Cross-examination by Mr. Brown.

Q. Mr. Powell, don't you know, as a matter of
1363 fact that Mr. Robinson had not been in Louisville to work since 1931?

A. No, sir, I did not know a thing about it.

Q. And don't you know that the Woolets only began to work for the Stolls the early part of 1933?

A. I don't know a thing about that.

Mr. Brown: Well of course I object to this testimony. (At this point the hearing in private concluded.)

Back in the presence of the jury the following proceedings were had:

By the Court: I believe possibly counsel for the defendant should designate for the purpose of the record the particular questions in the transcript that you claim that these answers are contradictory of. You designated them to me at the desk but it does not appear in the record.

Mr. Hogan: We designated them more or less by stipulation.

The Court: It doesn't appear in the record.

Mr. Brown: I don't know that we stipulated.

Mr. Hogan: We agreed that he would narrate his story.

1364 The Court: Well I want the record to show that I gave counsel the opportunity to indicate to me the particular questions that he thought these answers were to rebut, and I think those ought to be put into the record now.

Mr. Hogan: All right.

The Court: Are the questions numbered?

Mr. Hogan: No they are not.

Mr. Brown: The pages are numbered.

The Court: You read them to me here at the desk a little while ago.

Mr. Hogan: Yes. Pages 652, of course not all of that

Testimony of William K. Powell

page, but part of that page, 653, 654, 655.

The Court: That is of the original transcript which, of course, can be identified later, if necessary.

Mr. Hogan: Wait a minute. There may be others; I will take a look.

The Court: That is just the point, if there are others, I want them called to my attention now.

Mr. Hogan: Pages 656, 657—

The Court: Now, were those read to me at the desk?

Mr. Hogan: No, not at the desk.

The Court: Well I asked you to tell me at the desk what you were relying on and now you are putting
1365 something in that you didn't read to me. Now I have got a right to rule on what you are relying upon, and don't put in something now that was not called to my attention.

Mr. Hogan: Well, if Your Honor please, I am trying to get this straightened out.

The Court: Well I don't think you are straightening out something with me if you put something in the record now that wasn't called to my attention before.

Mr. Hogan: Well if I didn't call it to your attention I will call it now—

The Court (Interrupting): All right.

Mr. Hogan: What I am trying to contradict are the quoted questions in the printed transcript that I have asked Mrs. Ann Woollet to which she said, "No" or "Don't remember," or some similar denial.

The Court: Well those questions, but I had particular reference to the time and place?

Mr. Hogan: We covered that by the other pages a minute ago.

Mr. Brown: There is no mention in the transcript of any evidence such as Greenwood Avenue or any man by the name of Powell.

Mr. Hogan: Yes, in this transcript but in the transcript with reference to Joe Hayse.

The Court: All right.

1366 Mr. Hogan: May I state those pages?

By the Court: Yes.

Testimony of Mrs. Jessie Robinson

Mr. Hogan: Pages 656, 657, 658, 659, 660, 661, 662, 663, 664, and 665.

The Court: Those all are the questions and answers that you asked the witness about?

Mr. Hogan: Yes.

1367 MRS. JESSIE ROBINSON, called as a witness in behalf of the defendant, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Hogan.—

Q. What is your name?

A. Mrs. Jessie Robinson.

Q. You are the mother of the defendant, Thomas Henry Robinson, Jr.?

A. I am.

Q. Where do you live, Mrs. Robinson?

A. At 1211 Cedar Lane, Nashville.

Q. Is your husband living or dead?

A. No, he is dead.

Q. What was his name?

A. Thomas Henry Robinson.

Q. How old are you, Mrs. Robinson?

A. I will be sixty-eight years old next month—January.

Q. When was your son, Thomas Henry Robinson, Jr., born?

A. May 5th, 1907.

Q. Did you have any other child or children than he?

A. No.

1368 Q. What school or schools did he attend during his early years?

A. He attended Ross School.

Q. A little bit louder, if you don't mind.

A. He attended Ross School in his early years.

Q. What was your husband's business?

A. He was a bridge contractor with the Nashville Bridge Company.

Testimony of Mrs. Jessie Robinson

Q. How was Tom's early life spent—Tom, your son?

A. Just as any other boy's would be.

Q. Was it a normal life, in early life?

A. Very much so.

Q. What other school did he attend after leaving Ross School?

A. Well, he became ill before he attended Wallace University.

Q. Did he ever sustain any personal injuries or blows upon his head or face during his childhood?

A. Yes. At one time he was struck or hit on the cheek by a horse when we were visiting in Ohio at the home of his—at least, my aunt.

Q. Was that a mild or severe kick?

A. It was quite a severe blow.

Q. What did it do to his face or head?

A. Well, it has made quite a large place, it has left a place on his cheek.

1369 Q. Did he attend Sunday School and Church in his early childhood?

A. Yes, always went to Sunday School and Church.

Q. What Church did he go to?

A. He went to the Presbyterian Church, the Woodland Street Presbyterian Church.

Q. Did he participate in the activities of that church?

A. Yes.

Q. And its religious and social functions?

A. Yes.

Q. How long did he attend that church, regularly?

A. Well, until he was grown, about—Oh, until he was twenty years old, probably.

Q. Did he have any malady or disease in his childhood or early manhood?

A. Yes, he had several.

Q. Tell us about those.

A. When he was about thirteen or fourteen—about fourteen years old, he had a severe case of malaria fever and was ill for about two months, and after that it terminated into T.B.

Q. Was any treatment afforded him or rendered him

Testimony of Mrs. Jessie Robinson

for his tuberculosis?

A. Yes. He was taken to the Davidson County
1370 Hospital, and he stayed there for eleven months.

Q. Did he sustain or contract any other illness or disease while he was in the tuberculosis hospital?

A. Yes. He had double pneumonia and was taken from there into town, to the hospital, for treatment.

Q. Did he ever have any pleurisy?

A. Yes. This was pneumonia and pleurisy together.

Q. And about what age was he when he had this tuberculosis, pneumonia, and pleurisy?

A. He was about fifteen.

Q. Did he lose any time from school or his studies while he was in this hospital?

A. He was out of school for a year or more.

Q. To what school did he go after he returned from the tuberculosis hospital?

A. He entered Wallace University, a prep school.

Q. How many years did he attend that school?

A. Three.

Q. And where is Wallace Preparatory School?

A. It was on Broadway.

Q. In Nashville?

A. In Nashville, Tennessee.

Q. Did he graduate from that school?

A. No.

Mr. Brown: Just a moment, Your Honor, I am
1371 going to object to that.

The Court: Objection overruled. Repeat the question.

(Question read by the reporter, as follows:)

"Did he graduate from that school?"

A. No, he did not graduate.

Q. After leaving the Wallace Preparatory School, did he attend any other school?

A. Yes. He went to Vanderbilt University.

Q. And about what age was he when he entered Vanderbilt?

A. Nineteen.

Testimony of Mrs. Jessie Robinson

Q. Was there any lapse of time between his leaving Wallace and entering Vanderbilt, other than the usual summer vacation period?

A. No.

Q. And what course of studies did he take at Vanderbilt?

A. He studied law.

Q. How long did he go to Vanderbilt?

A. He was there a year and a half, a little more than that—no, I am mistaken about that. He was there two years, two years and several months of the last year.

Q. Did he graduate from Vanderbilt?

A. No.

1372 Q. Was he a normal child up to the time he was in Vanderbilt?

A. Practically.

Q. All right, did anything unusual in his life happen while he was at Vanderbilt?

A. Yes.

Q. Will you tell the jury about that?

A. While Tom was at his fraternity house one morning—

The Court: Just a minute, gentlemen. This witness can testify as to what she knows of her own knowledge, but what was told her by the defendant or by other people I don't think is competent.

Q. Don't tell any conversation.

The Court: Were you at the fraternity house?

The Witness: No.

Q. Don't attempt to do that, Mrs. Robinson. Just tell what you know and what you observed.

The Court: Well, if she wasn't at the fraternity house she didn't observe it.

Q. Well, did you notice any change in his personality while he was attending Vanderbilt?

A. Yes.

Q. Was he a member of any fraternity while he was attending Vanderbilt?

1373 A. He was a member of two fraternities, the law fraternity and the social fraternity.

Testimony of Mrs. Jessie Robinson

Q. What change in his personality manifested itself that you saw yourself?

A. Well, Tom became very much depressed after this marriage, this forced marriage, and he lost interest in his studies and he quit school. When he entered the last year of school, he stopped school. He was not taken out of school, but he just quit of his own accord.

Q. Did he marry somebody under force or duress?

A. Yes, he married.

Mr. Brown: I don't think she knows anything about that.

The Court: Were you present, Mrs. Robinson?

The Witness: No, I was not present.

The Court: That was told to you then. You don't know anything about it except from what you have heard?

The Witness: No, I don't know anything about it, but I know it is true.

The Court: I cautioned you once or twice, Mrs. Robinson, that you do not tell the jury unless you know it. If it is something that someone told you, your son told you, or your husband told you, if you don't know it of your own knowledge and you were not present, please don't state that to the jury.

1374 Q. Did he live with this person that he married?

A. No.

Q. Did that marriage have any effect on him, or seem to, on his personality?

A. Yes, quite a bit.

Q. Suppose you tell us about that.

A. At that time Tom was enjoying the privileges of a very nice social life, he was going to parties, tea dances, having dates with all the nice girls, and after this marriage he was just ostracized from all of his former friends, and it just depressed him, and he brooded over it a lot, and he just finally lost interest in his studies altogether and we just didn't know what to make of him.

Q. How did his behavior or change in behavior at home manifest itself?

A. Tom just—he just was so depressed over all of it, he brooded over all of it, he just went all to pieces.

Testimony of Mrs. Jessie Robinson

Q. What kind of a personality had he had before this marriage?

A. Very pleasant personality.

Q. What kind did he have following this marriage?

A. Tom became irritable so that we could hardly live with him.

Q. Will you explain what you mean by that expression?

1375 A. Well, he would just go into tantrums over nothing, and just have regular brain storms, and we didn't know what in the world was the matter with him.

Q. What would he do in these tantrums or brain storms?

A. Well, he would do all sorts of things.

Q. Tell some of them.

A. Lots of times he would throw things all over the house, and he would curse me, he cursed me, and one time he struck me, and his father got up and slapped him, and then he said he was going to kill his father, and he got a gun, and I stepped in between them.

Q. Had he had that kind of personality before that marriage?

A. No.

Q. With reference to his behavior or misbehavior and obedience to you and his father before this marriage, how was it—good or bad?

A. Tom was an awfully nice boy clear up until that.

Q. Did you ever notice any change in the expression of his eyes after this marriage?

A. Yes, I did that.

Q. Can you describe that?

A. His eyes, the pupils of his eyes would dilate so that they were—I don't know, it was really frightening to see his eyes at times.

1376

Q. Can you compare his expression with any other expression you have ever seen or known about?

A. No, I cannot.

Q. Would you say it was a stare?

A. Yes, a stare, one of these wild—I don't know, just one of these crazy stares—I don't know.

Testimony of Mrs. Jessie Robinson

Q. What happened to the marriage to this girl?

A. There was a divorce.

Q. Who obtained the divorce, she or Tom?

A. Tom obtained it.

Q. Was there any child born of that forced marriage?

A. Yes, there was.

Q. Now, after the divorce of Tom to this girl or woman, what did he do then? Did he go to work or did he stay at home, or what?

A. No, he stayed at home.

Q. What was his demeanor or conduct at home?

A. He was just all to pieces.

Q. Did he ever marry again?

A. Yes. He married within a year, I think, after this other marriage.

Q. How was his married life with the second person, with reference to whether it was docile or stormy?

A. It was quite stormy.

1377 Q. Well, can you tell of any actions on the part of your son that you say amounted to stormy actions?

A. Well, they hadn't been married but a short while—

The Court: Now just a minute, Mrs. Robinson, the ones that you saw, not the ones that were told to you.

Q. Things you, yourself saw.

A. One time Frances took me to the store—

Q. Who is Frances?

A. That's Tom's wife.

Q. Second wife?

A. His second wife.

Q. All right.

A. And Tom was always awfully jealous and suspicious, and we hadn't been gone but about fifteen minutes when Tom followed us to the store and he told Frances to come out, he wanted her to go home with him, and he made her go home with him and left me at the store. Oh, after probably a half hour, he came back after me without Frances, and when I got back Frances—the dress she had on when she went with me was all torn in shreds, they had quite a fuss.

Q. Did he ever go into those rages or tantrums at

Testimony of Mrs. Jessie Robinson

any other time during his married life to Mrs. Frances Robinson?

A. Yes.

1378 Q. Tell the jury some of those things that he did.

A. Another time he was dressing and a shirt he had on happened to be one—to have gotten misplaced, it was his father's shirt, and he took that and tore it in shreds.

Q. Are those just isolated incidents or did those incidents or like incidents occur with frequency?

A. Quite often. Tom would go into these violent brain storms over no seeming reason at all, and we wouldn't know just what to make of it.

Q. Did he continue to be a good mixer in society or did his attitude towards society change?

A. No, he shunned society, he kept away from everything, just seemed like he withdrew into himself, he just didn't want to go around anyone, he didn't even want to go around us, kept away as much as he could from us.

Q. Did he continue in his church?

A. No, he stopped church.

Q. Why did he quit going to church?

A. He thought the preacher was directing all his—
Mr. Brown: I object to that.

The Court: What his thoughts were, of course, were not known to the witness.

Q. Did he tell you why he quit?

The Court: That doesn't help it any.

1379 Q. Did he quit going to church?

A. Yes.

Q. Had he been active in any church functions before this happened?

A. Yes, he had always gone to all the Sunday School and social gatherings.

Q. Was he ever a Boy Scout?

A. He belonged to the Boy Scouts and DeMolay, both.

Q. Did he continue his activities with these social functions and Boy Scouts after this trouble that he had had?

A. Of course, after he got to be a certain age he didn't

Testimony of Mrs. Jessie Robinson

take much active part in the Boy Scouts, but he did withdraw from the DeMolays.

Q. Now, did he ever obtain steady employment, or, rather, did he work steadily or was he unstable?

A. No. At the time he married Frances he was working at the Wayne Lumber Company and worked there just a short while.

Q. How long did he work there, if you know?

A. Two or three months, I am not sure which, but just a short while.

Q. And after his severance of connections with the Wayne Lumber Company, was he unemployed for awhile?

A. Yes.

Q. Was Tom ever adjudicated a lunatic?

1380 A. He was.

Q. Once or more occasions than that?

A. Twice.

Q. Do you recall the year of his first adjudication as such?

A. I think it was in 1929. I am not sure about that, but I think it was in 1929.

Q. Now that was following a period in which he was involved in some charges, criminal charges, in the State of Tennessee?

A. Yes.

Q. And for which he had been indicted?

A. Yes.

Q. Was he committed to any lunatic asylum or hospital?

A. Yes. He was sent to Central State Hospital for observation, for a period of observation, about two or three weeks, and he was brought back into court and sent back to Central State Hospital.

Q. How long did he stay at the Central State Hospital as a result of that commitment?

A. Eleven months.

Q. Did the court commit him?

A. Yes.

Q. Eleven what?

A. Eleven months.

Testimony of Mrs. Jessie Robinson

1381 Q. What happened to the criminal charges that had been pending against him?

A. They were dropped. They were nolle pressed.

Q. Following the time of the filing away or the nolle pressing of those criminal charges, was he then taken out of this hospital for the insane?

A. No, he was not. His father had him re-committed to Bolivar, Tennessee.

Q. How was that accomplished. Did he go to any court?

A. Yes.

Q. What court?

A. Judge Hart's court, I think.

Q. Wasn't it Judge Hickman's court?

A. Judge Hickman's court is correct, yes, Judge Hickman, the County Court.

Q. Did a jury inquire into his sanity in Judge Hickman's court?

A. Yes, had a jury trial.

Q. What was the verdict of the County Court, or Judge Hickman's court?

A. That he was insane and too dangerous to be at large.

Q. Where was he placed then?

A. He was taken to Bolivar.

1382 Q. What is Bolivar and what is there?

A. Bolivar is the Western State Hospital, at Bolivar.

Q. How long did he stay there?

A. He was there three months.

Q. Who took him out of there?

A. His father, at my insistence.

Q. Was he released to his father, his legal guardian?

A. Yes.

Q. Was there any objection made by the authorities at Bolivar as to his being removed or released from there?

A. Yes. Dr. Cocke strenuously opposed it.

Q. What happened to him after he was taken out of the Bolivar Hospital?

A. We brought him home then.

Testimony of Mrs. Jessie Robinson

Q. Did he get employment?

A. No, he didn't.

Q. What did he do? What did his life consist of?

A. Well, we brought him home, and Frances and Jimmie came to live with us, that's Tom's son. Tom had never been around Jimmie because he was born while Tom was in the Central State Hospital. Jimmie was more than a year old at that time. And they came to live with us, and Mr. Robinson took him with him on trips to keep him out in the sunshine and see if he could not help
 1383 him make a better recovery. He felt responsible for him and he wanted to help him recover.

Q. Did he recover?

A. Not to any great extent.

Q. What did he do after those trips that failed to make a recovery for him?

A. He became restless and nervous, and easily excited, and he stayed around home, and he made just half-hearted efforts to get positions, and he didn't want Frances out of his sight, they stayed together a great deal.

Q. Did he keep any position for any length of time?

A. No, he did not. I think at that time Tom did get a position with the Servel Electrolux Company at Evansville, Indiana, and he worked just one day.

Mr. Brown: I am going to object to that, Your Honor please, unless she was at Servel.

The Court: Unless you know, Mrs. Robinson.

The Witness: Well, I do know.

The Court: Someone told you?

The Witness: No, I know.

The Court: Were you there?

The Witness: No, I wasn't in Indiana.

The Court: Then you don't know how long he worked there.

The Witness: He came back after a day's job—after a day's work. He stayed there a day.

1384 Q. I believe he came to Louisville and worked for some weeks?

A. Yes.

Q. Do you know what year that was?

Testimony of Mrs. Jessie Robinson

A. 1931, I think.

Q. After he had worked in Louisville, did he return to Nashville?

A. Yes.

Q. Did he work or try to gain employment there, after he returned from Louisville?

A. Yes, he tried to get employment and did get employment just a short time with different people.

Q. Did he ever have any connection with the Andrew Jackson Business College?

A. Yes, he worked for them for several months as a solicitor for law courses.

Q. Did he ever have any ideas of reference, if you know what I mean?

A. Yes, he did.

The Court: Ideas of what?

Mr. Hogan: Reference.

Mr. Brown: That's a purely psychiatric term.

The Court: What do you mean by "reference"?

Mr. Hogan: Saw people standing off in groups and imagine they were talking about him.

1385 Mr. Brown: I don't know how she would know what he imagined.

The Court: Not unless he expressed himself.

Q. Did he express himself?

A. Yes, he did.

Q. What did he say?

A. He would see groups of people, his former friends, and he would say they were talking about him, he knew they were talking about him.

Q. What effect did that have upon him?

A. Just depressed him, of course, and Tom brooded over the situation a lot, too.

Q. When he came back to Louisville, did he go to any other city or cities in seeking employment?

A. Yes. He went to Chicago.

Q. Do you know whether or not he worked there or not?

A. Yes, he did work there.

Q. Do you know how long he was in Chicago?

Testimony of Mrs. Jessie Robinson

A. I think he went to South Bend, Indiana, first, and got employment with the Mar-Main Arms Hotel, and he worked there three months.

Q. Then did he come back?

A. Then he came back to Chicago and stayed there for several months.

1386 Q. Did he ever return to Nashville from South Bend or Chicago?

A. Yes. They came home from Chicago.

Q. How long did they stay in Nashville on that return trip?

A. Not very long.

Q. Where did he go then?

A. While he was at home he got employment then with the—it is so hard for me to remember all of these things. I can't tell a very connected story about it.

The Court: What is the last question?

Mr. Hogan: I thought she was trying to get her thoughts collected. What is the last question?

(Question read by the reporter, as follows:)

“Where did he go then?”

A. Yes. He came home—they came home, and after several months he got a position with the DuPont Company.

Q. Where is the Du Pont Company?

A. It is several miles out of Nashville.

Q. Is that the old powder plant?

A. Yes.

Q. And after that position, did he leave Nashville again?

A. Yes.

Q. Where did he go then?

1387 A. He went back to Chicago.

Q. Was that in 1934?

A. 1934.

Q. How long did he stay in Chicago on that occasion? If you know.

A. He came back home, I don't remember just what the date is, but he came back home, the first week in Sep-

Testimony of Mrs. Jessie Robinson

tember in 1934, unexpectedly. He had lost his position in Chicago at that time.

Q. Did that have any effect upon him?

A. Yes.

Q. How did it affect him?

A. Tom was just all to pieces. He came home—his father tried to help him get a position and suggested different places for him to go to get employment and told him to go to the welding school, go to Cleveland, Ohio, and try to get employment there.

Q. Did he ever go to Cleveland, so far as you know?

A. We thought he had gone, yes.

The Court: Just a minute—Mr. Thornberry, is that air too much on your head?

Juror Thornberry: No, sir.

The Court: I saw you sneeze there a little bit.

Juror Thornberry: No, sir, I am all right.

The Court: I don't want any one of you jurors to get sick: If you feel too hot or too cold, or any drafts blowing on you that you don't like, let us know and we will all cooperate to remedy it.

Juror Thornberry: I am plenty warm, thank you.

Q. Now, Mrs. Robinson, I am going to ask you a few questions that are not very pleasant for me to ask, and I know not very pleasant for you to answer, but what kind of a behaved person was Tom's father?

A. Well, Mr. Robinson was a heavy drinker all of his life.

Q. Was he a heavy drinker before Tom's birth?

A. Yes.

Q. Was he drinking very heavily at the time of Tom's conception?

A. Yes.

Q. Suppose you tell the jury more about Tom's father's drinking habits and his conduct.

A. Mr. Robinson drank to such an extent that he would stay away from home for weeks at a time, and lots of times Tom would have to go and bring him home from the different places where he would be, either bath houses or hotels, and the last few years of his life he was just a

Testimony of Mrs. Jessie Robinson

wreck.

Q. Was he drinking to any extent at the time of Tom's conception?

A. Yes, not only drinking, but other things
1389 that go along with it.

Q. You mean carousing around?

A. Yes.

Q. Did he have any bad associates during those drinking spells?

A. Yes.

Q. What do you mean by that?

A. Well, lewd women.

Q. Now, after Tom, your son, was of some age and his father was engaging in these drinking and boisterous feats and carousing adventures, what effect did that have upon Tom, your son?

A. Tom felt awfully bad about it, it depressed him. He brooded over that a lot, too.

Q. Did that affect him noticeably?

A. Yes.

Q. Was that along about the time or after this forced marriage?

A. Yes.

Q. Now I am going to ask you this question because I know Mr. Brown is going to ask you. Did you meet your son in St. Louis after the time that it is claimed that he kidnapped Mrs. Alce Stoll?

A. I met him there after that; yes.

Q. You tell this jury in your own words what
1390 happened.

A. I went to St. Louis by arrangement, to meet my boy. I didn't know whether he would be there in St. Louis or whether I would be taken to see him. This woman who had been his companion approximately eighteen months, met me in St. Louis, at least I was told to meet her at a hotel there, and I had never seen her but once before and I didn't know whether I would even recognize her or not, and I met her at the Jefferson Hotel in St. Louis, and we spent the whole day there in a room, and late in the evening she took me to see Tom. They were

Testimony of Mrs. Jessie Robinson

living in an apartment, I don't know just in what section of the city, and I met Tom, the first time I had seen him in more than a year.

Q. Now, were you given any money on that occasion?

A. Yes, I was.

Q. How much?

A. Four Thousand dollars.

Q. Who gave it to you?

A. Tom gave it to me.

Q. Had the Department of Justice agents been on the look-out for your boy?

A. Yes. They had not only been on the look-out for him, but they had been in my home. They were ensconced in my home for ten days or two weeks, lived there.

Q. Were they trying to find him at the time that
1391 that you met him in St. Louis?

A. Yes.

Q. Did you have any fear that you may never see your boy again?

A. I certainly did. I went especially to St. Louis to beg my boy to give himself up. I felt that the time was short. I feared that he would be apprehended and probably killed, and I begged him to give himself up. That's what I went for mostly.

Q. You were his mother?

A. Yes.

Q. And you would have gone through fire to see him.
Mr. Brown: I object to that.

The Court: That's a leading question.

Q. What was his attitude then? Did he listen to you?

A. No, he didn't listen to me. He didn't pay any attention to that.

Q. What was his ideas or condition mentally as it manifested itself to you on that occasion?

A. Tom was drinking quite a bit at that time. This woman kept him drunk—not drunk, but quite a bit of liquor he drank while I was there.

Q. Well, was he the same type of boy that you had raised?

1392 A. No, a different Tom altogether.

Testimony of Mrs. Jessie Robinson

Q. Did you exert any influence over him on that occasion?

A. No.

Mr. Hogan: You may take her.

Cross-examination by Mr. Brown.

Q. Now Mrs. Robinson, during your son's prep school days, didn't you make him a present of a very expensive car?

A. No, not during his prep school days. I gave him the car when he was released from the tuberculosis hospital, in order that he might stay out in the sunshine, in the open air, so that he could recover, so he could enter school during the fall.

Q. That was during the period of 1923 to 1926, was it not, while he was attending Wallace Preparatory School?

A. No, he hadn't attended Wallace then. He got the car before he went to Wallace.

Q. After he was released from the tuberculosis sanitarium?

A. Yes. I gave it to him on his sixteenth birthday.

Q. It was a fifteen hundred dollar car, wasn't it?

A. Oh, no.

1393 Q. What kind of car was it?

A. It was a Buick coupe, about eight hundred dollars I think is all.

Q. At that time, it was on his sixteenth birthday?

A. Yes.

Q. On his sixteenth birthday.

A. Sixteenth birthday.

Q. Now Mrs. Robinson, you testified with reference to the St. Louis expedition that you made, and you said he was drinking rather heavily at that time?

A. Yes.

Q. And you felt quite worried about your son?

A. I was.

Q. Due to his association with this Jean Breese?

A. Yes.

Q. You felt that he had deteriorated physically and mentally?

Testimony of Mrs. Jessie Robinson

A. Yes, quite a lot.

Q. He was a menace to society?

A. I can't say that. I am no judge.

Q. You are no judge of that?

A. No, I am not judge of that; no, sir.

Q. But did you report to any law enforcement officer, either state or federal, his whereabouts, Mrs. Robinson?

A. I didn't even know where he would be, Mr. Brown.

Q. Did you report to them where he had been
1394 immediately after?

A. I didn't know where he had been, only just what they had told me.

The Court: He means after you left.

The Witness: No, I never at any time knew where my son would be or where he was.

Q. No. Immediately after you left the apartment in St. Louis, did you report to any federal, state or county authorities, the fact you had been in St. Louis the day before?

A. No, I didn't. I didn't think it was necessary.

Mr. Brown: That's all, Mrs. Robinson.

Mr. Hogan: That's all, Mrs. Robinson.

The Court: Before we call the next witness, we will take a short recess, Mr. Hogan.

Members of the jury, move about and make yourselves comfortable. Do not discuss the matter, however, among yourselves or with anyone, or permit anyone to talk about it in your presence.

The Marshal will give us a short recess.

A short recess was taken, after which the hearing was resumed as follows:

1395 RICHARD M. ATKINSON, called as a witness in behalf of the defendant, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Hogan.

Q. What is your name?

A. Richard M. Atkinson.

Testimony of Richard M. Atkinson

Q. Where do you live, Mr. Atkinson?

A. Nashville, Tennessee.

Q. What is your business or profession?

A. Attorney at law.

Q. How long have you been such?

A. Since 1921—I have been practicing since 1921.

Q. From what school or schools are you a graduate?

A. I am from Vanderbilt University and Cumberland University.

Q. Cumberland Law School, I take it?

A. Cumberland Law School.

Q. Were you at any time Congressman from the State of Tennessee?

A. I was.

Q. What year was that?

A. That was in the year 1937 and 1938.

Q. That National Congressman?

A. Yes, sir.

Q. Washington?

A. Yes, sir.

1396 Q. Democrat, I take it.

A. Yes.

Q. Don't have any Republicans in Tennessee, do you?

A. We don't have them.

Q. What other office did you have in the State of Tennessee, if any?

A. I was District Attorney General for the Tenth Judicial District of Tennessee from 1926 to 1934.

Q. Does that embrace Nashville and Davidson County?

A. It embraces only Davidson County, due to the population.

Q. Do you know this defendant, Tom Robinson, Jr.?

A. I do.

Q. How long have you known him?

A. Since childhood.

Q. Was he a well liked boy in his community during his early manhood?

A. He was.

Q. Did he engage in social activities among the better class of people in Nashville.

Testimony of Richard M. Atkinson

A. Yes, sir.

Q. What kind of behaved boy was he, generally?

A. Well behaved.

Q. Was he well liked?

A. Yes, well liked.

1397 Q. Did you, in the capacity of your office as Attorney General for that District, have occasion to ever indict this defendant?

A. Yes, sir.

Q. When was that?

A. It was in the latter part of the twenties, I think
1929.

Q. Those charges were some charges of robbery and impersonating an officer, I believe.

A. Yes, sir; two cases of robbery.

Q. One of impersonating an officer?

A. Yes, sir.

Q. Was he tried on those charges?

A. How is that?

Q. Was he tried before a jury on those charges?

A. He was tried on a plea of present insanity.

Q. Was an inquisition into his sanity made?

A. Yes. He was sent out to Central State Hospital.

Q. For what purpose?

A. I said tried on the plea of present insanity. I want to correct that. He was sent for observation and was never tried.

Q. On the criminal charges?

A. Yes.

Q. After his observation of some two weeks, I
1398 believe, was a jury impaneled in the Davidson Circuit Court, Criminal Division, to inquire into his sanity?

A. No, sir.

Q. To refresh your recollection, wasn't a jury impaneled and didn't they pass upon his sanity in that court?

A. That may be true. I have just forgotten whether we left him out there—that is correct, yes. It was impaneled, I believe.

Q. Following that, he was committed to Central State

Testimony of Richard M. Atkinson

Hospital.

A. That's right.

Q. Now, were those criminal charges ever nolle prossed or filed away, as we sometimes term it?

A. They were nolle prossed in the following year, sometime in the spring, I think.

Q. Now, I will ask you if this insanity adjudication and commitment was done as any manner of disguise or device to assist this boy in any way to escape the charges pending against him.

A. No, sir.

Q. I believe that following his release from Bolivar and from Central State Hospital, some women from Nashville territory preferred some charges against him.

A. Yes, sir.

Q. Was he ever convicted on any of those charges?

1399 A. No, sir. He was indicted on one of them.

Q. Was he ever convicted?

A. No, sir.

Q. Has he ever been convicted of a felony, to your knowledge?

A. No, sir.

Q. Or of a misdemeanor, either?

A. I am not sure about that.

Q. You don't know, do you?

A. No, sir.

Q. Did he ever at any time make any brag or statement to you, "Bring those women in court and I'll smear them all over Nashville."

A. No, sir.

Q. That didn't happen, did it?

A. No, sir.

Mr. Hogan: Your witness, Mr. Brown.

Cross-examination by Mr. Brown.

Q. Mr. Atkinson, directing your attention to a threat to ruin those girls' reputation, did you have any conversation early in 1934 with Mr. Thomas H. Robinson, Jr., in the presence of this father, Thomas H. Robinson, Sr., and

Testimony of Richard M. Atkinson

I will ask you if Thomas H. Robinson, Sr. or Jr. did
1400 not say this, in substance, that he, Thomas H. Robinson, Jr., was not in the least fearful of any of the three girls prosecuting him since he would testify that they had gone voluntarily into his automobile and had gone to the country with him for the purpose of having improper sexual relationship and he would ruin their reputation.

A. Yes, sir.

Q. He did say that?

A. Yes, sir.

Q. Now, when young Robinson was indicted, I will ask you if his father and J. J. Lackey, his attorney, did not call upon you and it was mutually agreed between you that young Robinson should be sent to the Central State Hospital for observation?

A. Yes, sir, that was done. That was the only way we could do it under our law.

Q. You, of course, and I do not mean to imply that you were a party to any trick to keep this boy out of the penitentiary—you were not a party to any such scheme?

A. I was not, sir.

Q. Of course not. Now you have known Robinson for a long time, have you not?

A. That's true.

Q. You had occasion to observe his demeanor and you had been at that time District Attorney General
1401 for a period of approximately three years?

A. Since September 1st, 1926.

Q. Now I will ask you, Mr. Atkinson, if at all times in your opinion and from your long knowledge of Robinson, and from your observation of him, that at all times in your opinion Robinson, Jr. knew right from wrong.

Mr. Hogan: That's objected to. He is not a mental expert.

The Court: He is not passing on any conclusion. I think he can tell his own opinion as to whether he knew right from wrong. That's a matter that I think most laymen have some opinion about, if they have had the opportunity to be associated with a person.

Testimony of Richard M. Atkinson

Mr. Hogan: I think that's a matter that addresses itself to a particular science, medical testimony, known as expert testimony.

Mr. Brown: The witness is competent on that.

The Court: I believe that this witness if he qualifies himself as having been associated with Robinson and known him over a period of time and observed him, feels that he did know him well enough and long enough to be advised of that fact, he can so testify. Do you think that you did know him long enough, and well enough, and closely enough, and observed him closely enough to be qualified to make such an answer?

1402 The Witness: Yes, I think so.

Q. I will ask you further, Mr. Atkinson—

The Court: Did he answer that?

Q. Yes, did you answer that last question?

A. I don't know whether I answered or not, but I do think that he knew the difference between right and wrong.

Mr. Hogan: Exception.

Q. I will ask you further, Mr. Atkinson, if in your opinion Robinson, Jr. did not fully understand the nature and consequence of any criminal act that he might commit.

A. Yes.

Mr. Hogan: That same objection, if Your Honor please. We are getting into non-expert testimony.

The Court: The jury will understand that this is non-expert testimony. It is not medical testimony and not given to you as medical testimony, but it is given to you as the opinion of a person who had contact with this man, who had a chance to observe him over a long period of time, and a layman's opinion as to such facts, not medical facts, medical opinion, it is a layman's opinion as to such facts I think are competent for the jury to hear, but keep in mind that it is a layman's opinion, not any medical expert's opinion.

Mr. Hogan: Exception. Without interposing
1403 an exception each time and having it overruled, I would like the record to show an exception to this line of questioning.

Testimony of Richard M. Atkinson

The Court: And, of course, the jury will understand that any one witness' opinion is not conclusive in the matter. You will consider all the evidence in the case bearing on such an issue.

Redirect Examination by Mr. Hogan.

Q. Could he keep from doing right or wrong?

A. What is the question?

Q. Could he control his actions and keep from doing right or wrong?

A. Yes, I think he could if he wanted to.

Q. He didn't do it, though did he?

A. What is that?

Q. He didn't do it, did he?

A. No, he repeated the offenses.

Q. How is that?

A. I say, he repeated the offenses.

Q. Wouldn't that indicate to you that there was some lack of control, Mr. Atkinson?

Mr. Brown: I suggest that Mr. Atkinson is his own witness. He is trying to impeach him.

A. I would say this, my opinion is this, that
 1404 any man that continues to violate the law, I think there is something wrong with him, but I still think he knows the difference between right and wrong.

Q. There is something wrong with a man who continues to get in trouble, isn't there?

A. Yes, I would say there is something wrong with him.

Q. Something wrong with his mind?

A. Yes, he has got a wrong slant.

Q. Now Mr. Atkinson, did you ever see Robinson when he was in any highly nervous state?

A. Yes, sir.

Q. When was that?

A. Well, on one occasion immediately after the robbery of Mrs. Wagner and Mrs. Lamb, I had occasion to see his little sister-in-law, Mrs. Martha Warren on Church Street, I was going home from Criminal Court, and I stopped and asked her to go home, let me take her home,

Testimony of Richard M. Atkinson

and I did. We were at that time hunting for the parties who had perpetrated these robberies. And on the way out she mentioned the fact that her father had been sick and thought a great deal of me and asked if I wouldn't go in and talk to him a few minutes, and I agreed to do it. As I stepped in the door, young Mr. Robinson was standing there with Mrs. Frances Robinson, and he was
 1405 in a highly nervous state when I went in the door.

A few days later when he was apprehended and brought to my office he made the remark that "I thought my time had come when you came in the door the other day." Now he was in a very highly nervous state at that time.

Q. Did Robinson during the time that these robbery charges were pending, absent himself from Nashville?

A. I think he did.

Q. Do you know? Isn't it true that he stayed there and took some of these things and borrowed some money from the bank?

A. You mean during the course of robberies he perpetrated?

Q. This Lamb-Wagner matter.

A. He was there in Nashville, yes, sir. I thought you meant these other offenses against these other girls.

Q. No, the Lamb and Wagner matter. Did he disguise himself or attempt to?

A. No, sir, not that I know of.

Q. Went around the town there in his usual customary manner, did he not?

A. Of course, I couldn't tell you that. I didn't observe him all the time. I saw him on this occasion I referred to. That was between the time of his arrest and the commission of the offense.

Q. So far as you know, he never concealed
 1406 himself from society during the time they were trying to solve these robberies?

A. That's correct, sir.

Recross-examination by Mr. Brown.

Q. At the time of your visit to this home where Robinson was, on seeing you and you seeing him he was highly

Testimony of Richard M. Atkinson

nervous—you were the prosecuting attorney at that time.

A. Yes, sir, I was.

Q. What size city is Nashville?

A. Nashville is about 170,000 people.

Q. From your experience, after a person has committed a crime in Nashville, have many or few of the persons that have committed them been arrested there?

A. The vast majority of them are arrested right there.

Q. Arrested right there in Nashville?

A. Yes, sir.

Redirect Examination by Mr. Hogan.

Q. This boy was well known around Nashville?

A. Yes, sir.

Q. Enjoyed a wide acquaintance?

1407 A. Yes, sir.

Q. Had a host of friends, did he not?

A. Yes.

Mr. Hogan: That's all.

Mr. Brown: That's all.

DR. H. B. BRACKIN, called as a witness in behalf of the defendant, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Hogan.

Q. You are Dr. H. B. Brackin?

A. Yes, sir.

Q. What is your business or profession?

A. I am Superintendent of the Davidson County Hospital, Nashville, Tennessee.

Q. From what school or schools are you a graduate?

A. University of Tennessee, 1921.

Q. Any other school?

A. No, sir.

Q. What kind of training did you receive in the University of Tennessee?

A. Just the general medical course, all the different

Testimony of Dr. H. B. Brackin

subjects that you study in medicine.

Q. Are you a graduate of the medical course of
1408 the University of Tennessee?

A. Graduate of what?

Q. Of the medical school or college of the University of Tennessee?

A. Yes, sir.

Q. When did you graduate?

A. 1921.

Q. Have you practiced your profession since that time?

A. Yes, sir.

Q. Continuously?

A. Yes, sir.

Q. Have you had any special training in psychiatry?

A. Yes, sir. Practically all of my life I have done psychiatry.

Q. Will you tell this jury what training or education and experience you have had in that field?

A. I graduated in 1921 and went to the General Hospital in Nashville for general internship. After that I went to New York in psychiatry, stayed there about fourteen months, then I went to North Carolina as assistant physician, State Hospital for the Insane, where I stayed five years. Then I went to Central State Hospital in Nashville as Assistant Superintendent, stayed there six years.

Then went into private practice for two years, and
1409 since then I have been Superintendent of the Davidson County Hospital.

Q. As Superintendent of the Davidson County Hospital, do you have any mental inmates there?

A. Yes, sir, about five hundred.

Q. By that I mean, do you have inmates that have mental diseases or mental trouble?

A. That's correct.

Q. During your experience as a psychiatrist and medical expert, have you had occasion to, and have you diagnosed and treated many cases of insanity and mental cases?

A. Yes, sir.

Testimony of Dr. H. B. Brackin

Q. About how many would you say you have observed, diagnosed and treated over that period of time?

A. That would be very difficult to say. During the time I was in New York we had approximately seven thousand insane patients in that hospital. Of course, I couldn't observe all of them, but there was approximately seven hundred that I saw most every day. And while I was in Carolina we had approximately two thousand patients in the hospital. In the Central State we had approximately two thousand, and where we are now we have about five hundred insane. Of course, they are changing constantly.

Q. Dr. Brackin, I'll get you, for the purpose
1410 of the record, I will impose on you a little bit and get you to read to the jury that affidavit. That's an affidavit of a doctor. It is self-explanatory and it has been agreed—

Mr. Brown: Is that Dr. Gayden's.

Mr. Hogan: Yes.

Q. (Mr. Hogan Continuing) —that his affidavit might be read and used as his evidence in this case.

Mr. Brown: I have no objection to that, Your Honor.

A. (Reading "Comes Dr. Horace C. Gayden who makes the following statement, to-wit:

That he is a practicing physician in Nashville, Tennessee, and has been so engaged since 1920. He states that he is a graduate of Vanderbilt University in Nashville, Tennessee, and is authorized to practice medicine in the State of Tennessee and that he has an office at Seventh and Church Street in Nashville, Tennessee.

He states that he has received recently a subpoena to appear at 9:00 o'clock AM on December 3, 1943, to testify as a witness in behalf of defendant, Thomas H. Robinson, Jr. in the above styled case. He states that for several years he and his brother, Dr. L. R.

Gayden, had an office and practiced medicine
1411 in Nashville, Tennessee, and that he and his brother treated Thomas H. Robinson, Jr. for syphilis for

Testimony of Dr. H. B. Brackin

probably several months; not under six months and not over twelve months—several years ago, to wit, May 28, 1932 to October 4, 1932, although all his records of the treatment of said Robinson cannot now be found as his office has been moved and his old records destroyed or mislaid, and consequently he has no precise dates. He further states that his brother, Dr. L. R. Gayden, is now in the United States Army stationed at Maxwell Field, Alabama, where he has been for about 15 months. He was given the routine treatment for several months for syphilis which was alternating courses of neo salvasan intravenously in the arm and bismuth intramuscularly. He states that he never did examine the spinal fluid of this patient. He states that this is all he knows about this man's condition.

He further states that when his brother, L. R. Gayden, went into the United States Army in August, 1943, their entire office practice which was then large fell upon him and that ever since that time he has simply been submerged with work necessary to be done for the protection of his patients, and that he is a surgeon and has done much surgical work, including surgical operations on various patients; that he now has patients on whom he has operated.”

1412

Mr. Brown: I don't think the rest of it has anything to do with this case.

Mr. Hogan: No, he don't have to read that. We would like to file that as the testimony of Dr. Gayden, and we might identify that.

The Court: I understand. The jury will accept that as what Dr. Gayden would testify to if he were here.

(The affidavit referred to was handed to the reporter and filed with the record as Defendant's Exhibit No. 17.)

1413 Q. Now, were you—did you have any connection with the Central State Hospital during the month of June 1929 and subsequent to that time?

Testimony of Dr. H. B. Brackin

A. Yes, sir. I was Assistant Superintendent out there from January 1928 until October 1933.

Q. Was this defendant, Thomas H. Robinson, in that institution for the purpose of observation or otherwise?

A. Yes, sir, he was there for observation and he was there after that.

Q. Now when was he there for observation, if you recall?

A. I couldn't state the exact date, but I believe it was in June 1929.

Q. I show you what purports to be a report which you made to the Judge of the Criminal Division of the Davidson Circuit Court, dated June 21, 1929, along with three other medical men, and ask you if you participated in the making of that report after an observation and diagnosis of Thomas H. Robinson, Jr.'s condition previous to the making of that report?

A. Yes, sir; I did.

Q. Who were those other doctors?

A. Dr. W. S. Farmer, who was the Superintendent and who is now dead; Dr. L. S. Love, and Dr. Charles

1414 H. Johnson.

Q. Where is Dr. Johnson?

A. I don't know.

Q. Where is Dr. Love?

A. Dr. Love lives in Nashville.

Mr. Brown: Dr. Johnson is in Paris, Tennessee. I will stipulate with you on that.

Q. Was that a part of the business of that institution at that time to make that type of report when called upon by the courts?

A. Yes, sir, for a number of years, and practically all the time I was there, if a case came into the criminal court at Nashville that they had reason to suspect had a mental disease they sent them out to the Central State Hospital for observation.

Q. And was that report made in the usual course of your business as Assistant Superintendent of the Central State Hospital?

A. That is correct.

Testimony of Dr. H. B. Brackin

Q. And was it submitted to the Criminal Court of Davidson County in the usual course of your business as Assistant Superintendent of that Hospital?

A. Yes, sir.

Q. Did you supervise—did you have supervision and control of the records of that hospital at that time?

1415 A. Yes, I did. I had examinations of all the male patients—all the white male patients.

Q. I will ask you to read that report to the jury?

Mr. Brown: I am going to object to that. He is here to testify.

The Court: I believe we discussed that heretofore. I think any report that was made in the usual course of business, based upon their examinations, or the result of their examinations can be read to the jury. As to what that report gives as to what other people told them I think is purely hearsay. The fact that it is incorporated into a report doesn't make it any more competent than if the man himself was here trying to give it in person. So much of the report as is not hearsay, I think, can be given to the jury, but what is clearly hearsay, where they merely tell what somebody else told them I think falls within the rule of hearsay testimony.

Mr. Hogan: Now for the record I want to offer that, if Your Honor please, (1) as an authenticated copy of—as a part of a judicial proceeding, authenticated in the manner prescribed by the statutes. And then I would like to offer it, if you won't accept it as that, then I would like to offer it as—

The Court (Interrupting): I will accept the
1416 part that is not hearsay.

Mr. Hogan: I mean if you will not accept the hearsay—

The Court: I won't accept the hearsay part, no.

Mr. Hogan: Then I would like to offer it as a record made in the usual course of business.

The Court: That can be admitted except to the point that is hearsay.

Mr. Hogan: Then I would like to offer it as a record of a public institution as contradistinguished from a judi-

Testimony of Dr. H. B. Brackin

cial record or proceeding. In other words, I would like to offer it as an entry made in the usual course of business. I think that is Section 695 of the United States Code Annotated.

The Court: I think any such records that deal with facts that occur at the time of examination, physical, mental or periodical examination, what the patients did, what is recorded about those, are admissible and can be given to the jury coming under those rules.

Insofar as the report tends to relate to things that happened in the past, that the man making the report knows nothing about except what he has obtained from hearsay, does not come within the rule. Accordingly, that part of the report will have to be left out.

1417 Mr. Hogan: Then we will offer it as a record in toto as defendant's exhibit—

The Court (Interrupting): My point is this, that since the doctors themselves, if they should come here and try to testify to those facts to the jury, an objection would be sustained on the ground it was hearsay. Now the fact that they have put that down in writing and it has been authenticated as a document, does not make it any more competent. It is still hearsay, regardless of whether they attempt to put it in themselves or whether you attempt to get it in by some other document.

Mr. Hogan: Well if Your Honor please, then we will offer it as a tendered exhibit and reserve an exception to that part of the exhibit which is not accepted.

The Court: Well now probably I had better define that a little more, and that is as to matters which occurred prior to the time when the doctor was present. Of course he may have some things that he heard while he was taking the examination which might be competent. But that past history that somebody told him about, his father or family or some other person, is not admissible.

Q. Now, doctor, without detailing or attempting to, what this boy's father or mother or anybody else for that matter told you except the boy himself, at that
1418 time, with reference to his symptoms or conditions, will you read from that report?

Testimony of Dr. H. B. Brackin

The Court: I think counsel had better look at that report.

Mr. Hogan (To Mr. Brown): Have you got a copy of it?

Mr. Brown: Yes, I have it here.

(After Mr. Hogan and Mr. Brown look at the report:)

Mr. Brown: Let me ask the witness a few questions. Dr. Brackin, the material contained in this report of June 21, 1929, where did you get the facts that are contained in this document?

Witness: The most of the material was probably obtained from the patient from talking with him and from observation and examination of him.

Mr. Brown: Can't you find that from your records when you found out—let me have the copy of the report.

Witness: There is not a great deal in that record that was not obtained from a discussion and examination of the patient.

Mr. Brown: When was the examination?

Witness: June 10th. Now this information, practically everything was obtained from him. When it wasn't

I think I said the hospital blanks says so and so. 1419 That was my custom. I haven't read this for so long that I don't know exactly what is in it.

Mr. Brown: What I am trying to bring out was the information that you got from Robinson, placed in there and also the information you got from his father and mother in there?

Witness: Very little from them. This was gained from the patient.

Mr. Brown: Where is the information you got from his father and mother?

A.: It was in this report I got from him.

Mr. Brown: Then you mean this report is made from information obtained from him and from his father and mother?

Witness: Yes, and from an examination of him.

Mr. Brown: Are you able to separate it or is it so mixed up that you can't tell?

Witness: I think I can tell part of it.

Testimony of Dr. H. B. Brackin

Mr. Brown: All right, I will rely on the doctor himself.

The Court: Of course, any information which you obtained by your own personal observation of him is proper.

Witness: Now there is in this report certain statements which we made of his mental disease which
 1420 would not be obtained from him or his family.

Q. That's your opinion?

A. That's my opinion.

Mr. Brown: Such statements as "flower of community," and "rock of puberty"?

Witness: That's right.

Q. Those are your expressions?

A. Yes, sir.

Mr. Brown: Yours or Dr. Farmer's?

Witness: Well—both. That is not just an expression of Dr. Farmer's but it is an accepted expression of psychiatrists.

Mr. Brown: I will leave it up to you to not read the parts that should be left out.

Witness: All right.

A. (Reading): "On June 10th, 1929, Thomas H. Robinson Jr. was committed by your Honorable Court to this institution for a period of observation as to his mental condition, and after our observation was completed to be returned to the custody of the jailer or sheriff of Davidson County.

"We, the Physicians of the Central State Hospital, beg leave to make the following report, namely:

"We believe this to be a case of Schizophrenia often referred to, or spoken of, as insanity of
 1421 adolescence. It is a slow insidious type of mental diseases and is frequently overlooked until the case is far advanced. The majority of these cases show symptoms between the ages of 16 and 25 or 30 years of age, and owing to the newspaper notoriety and owing to the prominence of the family, and owing to the fact that many of the lay people does not respect the opinion of Psychiatrists, we are going into this case a little more fully than we ordi-

Testimony of Dr. H. B. Brackin

narily do, and explain to your Honorable Court why we think this young man is insane."

Now he told me a great many things that his family also told me. For instance, about his education. Some things that are there next he told me and also his father and his mother told me.

The Court: All right.

Mr. Brown: I will rely upon you.

A. (Continuing to read): "In going into the history of this case, we find this young man has had an opportunity to get either a collegiate or a university education. But we find while he at one time led his classes he began to fall down at Wallace Preparatory School and failed to get a diploma but received a certificate failing in geometry. We find also that he entered the Vanderbilt

law school as a special student and started off well,
1422 but he lost interest in this school and did not study."

He told me that himself, "but soon began to cut his classes and according to the history of his case was doing no good in school." * * * "He also entered the YMCA Night Law School; lost interest in this school and stopped." Now it says here "According to his history," but he gave the information, that he had married twice. "The first woman he was not in love with; that he had been having sexual intercourse with this woman and was forced to marry her; * * * he sued for a divorce which was granted."

"Patient admitted that he had been a member of the Presbyterian Church and used to be regular in attendance, but he conceived an idea that the pastor was preaching directly to him. He lost interest and quit the church.

"He also says he has seen people standing off two or three together and would imagine they were talking about him. * * *

"He appears to have various wild theories in his mind, that he would argue against the church, against preachers, against prohibition and against the fallacy of the Bible. It seems that he has had a change of personality and that he had a disposition to criticise his town, his people and his friends without reason. He got an idea that his

Testimony of Dr. H. B. Brackin

1423 father and mother were against him at times, and admitted to us that he had cursed his mother, and on one occasion threatened to kill his father.

"According to history he married his last wife in January 1929. * * * He claims to have had sexual intercourse with his wife every time he would come in, morning, noon and night, and yet he was not sexually satisfied and would masturbate also. Masturbation in a case of this kind is not the cause, but is a symptom, or the result of a diseased mind.

"He thought that there were people who were mind readers and could read his mind and he would not go around them.

"The appearance and the facial expression of this young man is that of one suffering from mental trouble, and in taking this young man's life history, and in our personal findings, we are unanimous in our opinion that this young man at the present time is insane if we have made a correct diagnosis of his case and we believe we have. While a small percentage of these cases make a recovery, under proper treatment, the majority slowly deteriorate mentally and the prognosis is gloomy, as the French would have it, "they are stranded on the rock of puberty." This young man had no insight into his condition. * * * "We have no personal or financial interest in this lawsuit, and we are making the above statement purely for the
1424 information of your Honorable Court, at the same time sending a copy of this report to Attorney General Adkinson, and to the Attorney for the defense and keeping a copy in our office.

"We are asking the sheriff to come and carry him back to jail as per your order, for any disposition of his case that your Honorable Court may determine upon.

"Respectfully submitted,

W. S. Farmer, M. D.

H. B. Brackin, M. D.

L. S. Love, M. D.

Charles H. Johnson, M. D."

Testimony of Dr. H. B. Brackin

Q. What is the date of that report, Doctor?

A. June 22d.

Q. What year?

A. 1929.

Q. Was that your opinion then of this man's mental condition?

A. Yes, sir.

Q. Is it your opinion today of his then mental condition?

A. Yes, sir.

Q. Do you stand solidly 100% on that report?

A. That's correct.

Q. Now, following that period of observation—
1425 you said something about taking him back to jail—
what happened to him after that?

A. Well we got him back within a few days. They had a trial, I suppose, and he was found insane and committed to the Criminal Insane Department, to be held until he recovered.

Q. Now did you see him after his re-committment there?

A. Oh, yes, I saw him practically every day—every day unless I happened to be sick or was away on vacation or something like that.

Q. Did he have any idea about you?

A. Well I was under the impression that he thought that I—

Mr. Brown (Interrupting): I am going to object to any impressions.

The Court: No. Whatever he indicated to you. You couldn't read his thoughts, I don't expect, but whatever he indicated to you, his acts, you may tell that.

A. Well he told us, if that is permissible, that we didn't treat him right.

Q. Were you treating him correctly?

A. We were treating him just the same as we treated all of our patients.

1426 (Whereupon the photostatic copy of letter dated
June 21, 1929 addressed to Hon. Chester K. Hart and

Testimony of Dr. H. B. Brackin

signed by Drs. Farmer, Brackin, Love and Johnson, was marked Defendant's Exhibit No. 18 and filed.)

Q. Did he have any ideas of grandeur while he was in there?

A. Yes, sir.

Q. Now what do you mean by an idea of grandeur?

A. Well he felt that he was a very—

Mr. Brown (Interrupting): Is that reflected in your report, Doctor? I will be able to follow you if it is in this report.

Witness: It is in my mental examination—this report here.

Mr. Brown: All right. Mental Examination?

Witness: Yes.

Q. Now, Doctor, I will ask you to look at another report from the Central State Hospital, which bears the heading "Ward notes," and of the subject Thomas H. Robinson Jr. by Dr. Brackin, beginning with June 12, 1929, and appears and purports to cover Ward and family history and personal history, diagnosis, and observation and treatment notes of Thomas H. Robinson, Jr., and ask you if this record was prepared by you or at your instance and request?

A. It was prepared by me. I dictated all of it.

Q. Was it prepared by you after observation, 1427 treatment and diagnosis of this defendant's, Thomas H. Robinson Jr.'s, then condition and course?

A. Yes, part of it was prepared, of course, before the diagnosis because we had him there for something like two weeks before we diagnosed him. That was part of what we diagnosed him on, and we continued to make notes after that, and they are included.

Q. Was it prepared from a diagnosis that you made or had already made?

A. I don't understand you exactly.

Q. Was it prepared from your treatment and then present diagnosis, or a diagnosis that you had previously made and reported to the Criminal Division of the Davidson Circuit Court?

A. Well we confirmed our previous diagnosis. I saw

Testimony of Dr. H. B. Brackin

him every day for eleven months; and I was more confirmed in my opinion at the end of the eleven months that I was correct at first.

Mr. Hogan: Now I will offer this in the same manner as I did the other exhibit, in a triple capacity, and tender it as Defendant's Exhibit No. 19.

The Court: They have been previously identified as Exhibits Nos. 14 and 15, haven't they?

Mr. Hogan: No, they haven't.

1428 Mr. Brown: I, of course, will not have any objection to that if Dr. Brackin will look at it and say that it is a complete record of the case at the Central State Hospital.

The Court: Your objection is that he has not looked at it?

Mr. Brown: Yes, because my certified copy seems to be so much bigger than his.

Mr. Hogan: No, that is authenticated as to what it purports to contain.

Mr. Brown: Well we certainly ought to have the whole record.

Witness: This is the record of my original examination and several examination after that, and observation. It is not the record of his medical history; it is not the laboratory record; it does not show the copies of several letters and things of that kind that were in his record.

Mr. Brown: You mean it is not the complete record at the Central State Hospital?

Witness: No, it is not.

The Court: Have you the other parts?

Mr. Brown: I believe so.

The Court: Well, I believe, if counsel wants
1429 the complete record in, if you want to introduce any part of the record at all, Mr. Hogan, opposing counsel has the right to have the whole record introduced.

Mr. Hogan: Yes, that's right. I will offer what I offer, and he can introduce what he has.

The Court: All right.

Mr. Brown: Examine mine and see what is the difference, Mr. Brackin?

Testimony of Dr. H. B. Brackin

Mr. Hogan: It is thicker.

(The witness examines Mr. Brown's record.)

Witness: Yes, sir, this seems to be a complete record. As a matter of fact, there are a few letters in there that were written after I left the hospital.

Mr. Brown: All right. Thank you.

The Court: Now I believe you want to introduce what you have, and Mr. Brown wants to supplement it by what he has—

Mr. Hogan: That is right.

The Court: Now if you start out putting anything in, I am going to let Mr. Brown offer what he has.

Mr. Hogan: All right.

The Court: If you don't want it all in, don't offer any of it.

Mr. Hogan: I don't have anything to hide.

1430 (Whereupon photostatic copy of record filed by Mr. Hogan was marked Defendant's Exhibit No. 19; and the photostatic copy of record Mr. Brown had was filed in the record and made a part of Defendant's Exhibit No. 19.)

Q. Suppose you read this to the jury?

The Court: Just a minute, gentlemen. I suppose you have a right to have the record read but that looks like a very sizable document and if he starts reading on that I don't know when he is going to get through. How long is it going to take you to read that document?

Witness: About 20 minutes.

Mr. Brown: Well you will have to be a pretty fast reader.

The Court: I think you have the same failing that lawyers have, they always underestimate the time. What does the government want to do about this afternoon session? It is now five o'clock. If we get started here we may go on into the late hours tonight.

Mr. Brown: Shall we have a session tonight?

Mr. Hogan: All right.

The Court: We can go ahead here for a little longer, say close to 5:30 and come back at 7:30? How does the

Testimony of Dr. H. B. Brackin

jury feel about that?

I want to tell the jury at this time, as at other times, I want you to preserve your health and your well being;

I don't want to put you to any undue strain here.

1431 At the same time I want to caution you as to your eating and not eat too much just because it is there before you. Overeating sometimes has bad effects and we don't want any of you to be ill or incapacitated, particularly from overeating. Some of you look like you have a guilty conscience.

Well, suppose we let the Doctor start reading that report for a while and then we will adjourn.

A. (Reading) "Patient was admitted June 10th, brought from the County jail by two officers, and was accompanied by his father and other relatives. He was quiet on admission and entered the ward very willingly, and was placed on the receiving ward with the usual routine.

"Family History: Patient knew nothing about his grandparents.

"Father, Thomas H. Robinson, born in Nashville, living, age 56. He is in charge of the Bridge Department for the Nashville Bridge Company. His father uses alcohol at times, but seldom gets drunk.

"Mother, Jessie Preston, born in Marietta, Ohio, living, age 52. Patient is the only child.

"Patient had a great paternal aunt who was insane and possibly was in this institution. No other history of insanity, epilepsy or criminality among his relatives.

"Personal History: Borne in Nashville May 5,

1432 1907. He was healthy as a child, had the mumps, and then about the age of 16 had malaria and had to have some bones cut out of his nose, and following this was diagnosed Tubercular, and sent to the Davidson Tubercular Hospital where he remained about ten months. While there he had influenza which was complicated with pleurisy and double pneumonia. He also had his tonsils removed when about 15 years of age. He has had two operations for the removal of ingrowing toe nails. When about 18 years of age he got some infection in his eyes; first in one and then it spread to the other. About one year and a half

Testimony of Dr. H. B. Brackin

ago he had gonorrhoea. He has never had syphilis to his knowledge. Patient has had no accidental injuries that he recalls. His father says that he had some injury to his head when about the age of 12.

"Patient went to school and finished grammar school, in Wallace Preparatory School, lacking only one subject. He failed in solid geometry, so he did not get a diploma but a certificate. He led his classes in several subjects. While in preparatory school he took no special interest in athletics.

"He entered Vanderbilt Law School as a special student, lacking about one-half of a unit of having sufficient credits. If he made good grades all through, he was to receive a diploma. The first two years of law school he did well, made excellent grades. He then entered **1433** the third year in Sept. 1928. He lost all interest in school. Did not study, began to cut his classes. At this time he became infatuated with a senior in high school. She also began to cut her classes. His father saw he was doing no good in school and took him out in November. Patient does not know what caused him to lose interest in school after having done well until this time. He says he got a fair deal in school, and that his girl friend encouraged him. Says he was not worried over anything in particular.

"Patient got a job with the Wayne Lumber Co., as time-keeper, and worked for them until about the first of February. They told him at first that his work was the best of any one they had had, but later they let him out claiming they were doing away with the position, and did not offer him any other work. He says he had become disgusted with the work, as it was long hard hours and filthy, but admitted it was this kind of work which he was doing good work in. Sometime after he stopped school at Vanderbilt, he entered the Y.M.C.A. night law school. His father says he was very enthusiastic at first. Said the teachers at Vanderbilt were not practical lawyers, but that these men were every day attorneys, but, he soon lost interest and stopped. Did not go but three or four weeks. Says he could not get a job except one at \$20.00 per week where he had to make bond and be responsible for a

Testimony of Dr. H. B. Brackin

1434 lot of money. He admits that he just rocked along and didn't make much effort.

"Patient married the first time about the age of 19. He had been going with this girl for about nine months. He was not in love with her, but married her because a warrant was sworn out for him for the violation of the 'age of consent law.' It had been about six months since he had first had intercourse with her, and the girl told him that it would be about three months before the baby would be born, however, it was born six days after he married her. He soon recognized that they had misrepresented it to him, and that he was not the father of the child. He sued for divorce, proved it was not his child; introduced a letter into the court that she had written to a boy who lives in Columbia telling him that he was the father of the baby about to be born. He had a very hard time getting this letter introduced. He showed in court where this girl and her family had purged their statement on eighteen different counts. He won getting his divorce, and did not have to pay her or the child anything. This decree was rendered about July 1927.

"He met his present wife in Aug. 1928 and married her in January 1929. Married life has been congenial. His wife is pregnant. Patient has lived with his father prac-

1435 tically all of his life, but boarded for three or four weeks after he married, but on losing his job went back to his father's, and on April 26th moved away from his father's to Hillsboro Manor Apt. House where he had to pay \$52.50 per month and still had no job. He says he moved away because he could not get along. Says his mother was always getting after him, fussing at him, and irritating him. Before he moved away from his father's house on March 12th he made out two counterfeit search warrants; bought them from McQuiddy Printing Co. He knew how to make them out as he had learned in law school. He signed fictitious names. He took the street car and went to Mrs. Lamb's; went in the house, put them all in the living room and told them he had come to search for whiskey. He got all the jewelry including diamonds, watches, pins and rings which amounted to about \$3500.00

Testimony of Dr. H. B. Brackin

leaving the whiskey, although, there was a quart or more there. Went out and got in Mrs. Lamb's car and drove it to Mrs. Waggoner's. Presented the search warrant and told them he had come to search for whiskey. Put Mrs. Waggoner and a negro man in a room and obtained \$3200.00 worth of diamonds. Drove this car out on Jackson Boulevard and left it about a quarter of a mile from his father's home and walked home. He says that one day he heard his wife remark about how many diamonds Mrs.

Lamb had on her fingers. He then made a mental
1436 note of the number of the car she was in. He did not know Mrs. Lamb. This is the reason he went to Mrs. Lamb's house. Mrs. Caldwell, who lived in the same Apartment Building, the patient did, had often spoke of the number of diamonds that Mrs. Waggoner owned. He had seen Mrs. Waggoner, and knew where she lived, but had not met her. This was the reason he chose Mrs. Waggoner's house. Mrs. Caldwell was the lady who later introduced Mrs. Waggoner to the patient, at Mrs. Waggoner's request; that later caused Mrs. Waggoner to be able to identify the patient.

"The patient borrowed from the Broadway National Bank \$500 on three of these diamonds. He paid some debts with some of this money, and moved into the Apartment House. He had had the diamonds while at his father's hid between the layers of floor in a closet. He had done this by taking a piece out of the floor and then putting it back. When he moved to the apartment house he hid them in his locker in the basement. He pawned one ring for about \$20.00 about two weeks before he was captured. He had left twenty-one small diamonds at Small's for two months to sell for him, but Small could not sell them, but recommended Jacob's, who gave him \$50.00 for them. The rest of the diamonds and jewelry he still had when he was captured.

"Patient is a member of the Presbyterian Church. He used to be regular in attendance, but had lost interest and had quit going, and says now if he should
1437 die suddenly, he would go to hell.

"Patient admits the masturbation habit; beginning the

Testimony of Dr. H. B. Brackin

habit when the patient was at the Tubercular Hospital. He has continued every since. He has masturbated as often as every night, but average about every three nights. He still masturbates, although, he is married, but not masturbate so often. He can't tell why he does so now. Says he gets mad at himself for doing it. Says he can't explain that any more than he can why he took the jewelry.

"Past Mental Trouble: No history of any.

"Present Mental Trouble: The father says that he does not think his boy has any mental trouble now, that he may have had some mental trouble a year ago when he was worrying over the divorce trial. The most notable changes that his father has noted in his behavior and disposition in the past year have been his lack of interest in school; lack of interest in his work, losing his job; leaving his father's home without a job; exaggerated idea of how he would clean up on real estate, but did not get the options; then stealing of the jewelry and selling it, pawning it, and putting it up as collateral in the town where it was stolen, and continuing to stay in the town. His father also states that

the patient has not been susceptible to instructions
1438 or correction the last few months. The last year and one-half he has been cursing his mother when she attempted to correct or advise him. About six or eight months ago he cursed his mother and his father slapped him. The patient left the table and came back with a pistol in his hand, and was in a rage. His mother stepped between him and his father, and he stopped.

"He dropped his frat, the Pi-K-A because he said the boys were not square to him, wouldn't pay their debts, and they were dumbbells. He quit his Sunday School on account of his pastor.

"Mental Exam. Attitude and Manner: This patient has been quiet and well behaved since he entered the hospital. Eats and sleeps well. Is clean and tidy in his personal appearance. Readily obeys ward routine.

"Stream of Mental Activity: Patient answered all questions to the best of his ability. His answers were all relevant and coherent. There was no rambling or flight of ideas noted, in fact, nothing abnormal in his stream of

Testimony of Dr. H. B. Brackin

conversation. He really volunteered information and appeared frank and open. Was not evasive on anything that he was questioned in regard to.

"Emotional Reaction, affect and Mood: Patient has appeared slightly retarded since admission. He became emotional a number of times during the examination which took up practically all of the morning and afternoon.

1439 He appears worried over the condition that he is in, but says that he is not worrying so much about himself, but about his wife, his mother and his daddy. He says that he does not understand why he did it, and if he had it to do over, he would do different. At the present time his emotional reaction is adequate to the ideas he expresses, but he gives a history of his feelings in the past when his emotional reaction was not adequate with the ideas that he felt and expressed.

"Mental Trend, Content of Thought: Patient gives a history of feeling different for the last year and a half from what he used to feel. He lost interest in school. He lost interest in his work, and got so he did nothing but loaf. He got an idea that he was super-man. He was full of ego. At intervals he had the above feelings, but not all of the time. At times he would feel that he could commit crimes or do anything and get by with it. He felt there was no likelihood of his being caught after taking the jewelry, putting it up as collateral, selling it, etc., here in the same town, and also the fact that he had seen Mrs. Waggoner, and she had seen him before he had robbed her. Now he sees how thin and what a little chance he had of getting by, but before he had felt secure. He got to feeling there was no use in trying to do right. He had wild theories in his mind. At times he would argue against the church,

1440 against preachers, against prohibition, about the fallacies of the Bible, even when he did not believe it himself, or, at least, he did not believe it later, but says he believed it at the time he argued it, and later would become sorry. His disposition has changed so that he took every opportunity to criticize his town and the people and his friends without reason, and then would feel sorry later. He has become irritable with his mother. Every time she

Testimony of Dr. H. B. Brackin

would correct him it would make him angry and he slapped her once, and admits getting a gun to shoot his father, but could not recall the exact conditions that caused him to get it. He got an idea that his mother and father were against him; that they were not treating him right, and this is the reason that he left their home. He says his feelings as a whole toward the people and the world have changed. Not since he has been caught in this crime has the feeling of being sorry come over him, and he feels as if he had been taken down off of the pedestal where he thinks he was, but even yet, at times the peculiar thoughts run through his mind, such as, his ability to do things, and that he is not sorry. He says that he has feelings at times that he has done things before that he has not. In fact, he felt today as if he had talked to the examiner before when he knew that he had not, and when he got his glasses in jail he felt as if he had gotten them there before. Patient has

1441 no definite ideas of persecution, no delusions of any kind except these feelings of dual personality which has just been explained. No auditory or visual hallucinations have been elicited. Patient has often had dreams. The two most frequent dreams are first "falling from a high place," and second, "having intercourse." He says that he has had several times a day fantastical type of dreams.

"Sensorium, Mental Grasp and Capacity: Patient knows the name and the nature of the institution, number of states in the Union, named 5 large rivers, five countries in Europe. Knew when the Civil War was fought, and when the Spanish American War was fought, and named several legal holidays. His calculations in arithmetic were good. He knew the difference between a lie and a mistake, water and ice, and the meaning of "It takes a thief to catch a thief," and "The early bird catches the worm." He made a sentence with the words, dog, gun, hunter, rabbit and forest. He remembers 375 Oxford St. yellow after two minutes. His memory is good.

"Physical Exam: White male, age 22 years, height 5' 10½", weight 140 lbs.

"Head—Hair brown, scalp negative, ears negative, eyes

Testimony of Dr. H. B. Brackin

peculiar color, kind of grayish brown and assymetry of the face, left side smaller. Mouth—Teeth good. Tongue coated. Throat negative.

1442 “Circulatory System: Heart size, rate and rythm normal. No murmurs heard.

“Respiratory System: Chest well muscled. Expansion good. Lungs, nothing abnormal heard on auscultation.

“Alimentary System: Appetite good. Bowels constipated, uses Mineral Oil. Abdomen negative to palpation.

“G. W. System: Negative.

“Extremities: Negative.

“Neurological: Pupils irregular. React to light but dilate again. Patellar reflexes normal. Romberg normal. Repeat test phrases normal.

“Summary: White male, admitted June 10, 1929, Davidson County, 22 years of age, brought from the county jail. Was ordered sent here from Honorable Chester K. Hart's Court, Division 1, Circuit Court of Davidson County for a period of observation, and when it is done to be returned to the custody of the jailer. He was accused of robbing and has admitted same.

“History of normal childhood. Got along in school for two years in law, but suddenly lost interest, began to cut classes, stopped school, married; lost his job from lack of interest, moved from his father's home without a job and without reason for leaving so far as they could see. Had become irritable with his mother, and would not take correction, and cursing her and threatening to kill

1443 his father. Married twice. First time accused of violating of the ‘age of consent law,’ but won a divorce in court.

“History of unusual feelings for the past year and a half. At times feeling that he was a super-man, could do anything. Felt that he could commit crime and get away with it. Turned against the town, the people and church and argued against things and at other times would be sorry. These feelings would come and go. Stole this jewelry on a fake search warrant, pawned it, put it up as

Testimony of Dr. H. B. Brackin

collateral and stayed in town and felt he was secure. Now he is sorry and cries a lot, but at times yet has these other feelings to come over him. He got an idea that his parent were against him. He has no hallucinations. His memory is good, made a good showing on all mental tests. Physical examination showed nothing of importance.

STAFF NOTE: (June 14, 1929)

"Presented before staff for study—Drs. Farmer, Brackin, Love and Johnson present. Patients reaction was the same as described in history. He reiterated all of his previous feelings and experiences. Patient has noted people standing off talking about him. Has felt the preacher preached directly at him. Felt his parents mistreated him but he could not give one specific example. For the last year or two he has noticed he does not desire to be with many people as he used to do. His hands **1444** are cold and clammy. Will hold for further observation.

STAFF NOTE: (June 20, 1929)

"Presented for study—Drs. Farmer, Brackin, Love and Johnson, Internes Ramsey and Newton present. Patient continues to tell the same story as he had previously. He was questioned in regard to his sexual desire. He admitted having intercourse with his wife every time he would come in, morning, noon and night—and then would masturbate too. He said he saw Mrs. Waggoner on the street and talked to her and had on the same suit he had on when he robbed her, but he never felt that she could recognize him. He admits he worked for The Nashville Bridge Co. and that he told them they were not running their business right and that he made many suggestions as to how they should run it. He is still satisfied they were not running their business right but cannot tell you why. He quit church about 1 year before they moved from East Nashville, because he thought the preacher was preaching at him. He was about 18 years of age then. He has many ideas of reference. Has thought mind readers could read

Testimony of Dr. H. B. Brackin

his mind and would not go around them. He admits he did not think his mother and father did not treat him right, although he admitted they had always done everything for him he asked. Being the only child he has had every wish.

Diagnosis—It was unanimously agreed that he is a case of dementia praecox or schizophrenia.

1445 Admission Note: By Dr. Brackin, June 28, 1929.

"Patient was admitted June 27th, brought from Davidson County jail where he had been sent from this hospital on June 24th after having been observed here for 14 days by order of Judge Chester K. Hart of Criminal Court, Division 1. He has been in jail the three days since he left, and has had trial and was found insane by a jury and committed here to remain until he recovers, and then to be returned to the custody of the Sheriff or Jailer of Davidson County. During his stay here he was diagnosed "Dementia Praecox" unanimously by the Staff, and a full record of his previous examination and report to the court was on file in his folder.

"He appeared quiet on this admission. Entered the ward willingly and did not appear worried.

"Mental Exam. Attitude and Manner: There has been no change in this patient's condition since he left the hospital three days ago. He does not appear to be worried. Says he feels some better than he did. Feels like he would like to work; expects to cooperate and to do just as he is told to do here. Says his father and the doctors thought it was best for him to be here, and he is willing to abide by their judgment. He has lost some confidence in himself. Feels that he has dropped off of a pinnacle. Says his attitude has changed toward his parents. Says he has not

1446 masturbated during the time he was here previously, and during the time he was in jail. Says he promised his daddy he would not do it any more, and that he would try to straighten up.

"His expression and attitude is the same as it was on previous admission. He still appears to lack interest, and to not realize the seriousness of his case.

Testimony of Dr. H. B. Brackin

STAFF NOTE: (June 29, 1929)

Presented for diagnosis—Drs. Farmer, Brackin, Love and Johnson, Internes Ramsey and Newton Present.

“Nothing new brought out; says he recognizes now there has been something wrong with him. Feels he would like to go into the insurance business.

“Diagnoses: Dementia Praecox.

STAFF NOTE: (February 17, 1930)

Presented before staff for further study—Drs. Farmer, Brackin and Love present.

“There was a recapitulation of all statements made in the previous mental examination and patient remembers all of his ideas but claims he has overcome a lot of these. He admits that he feels inwardly that he is better and superior to most of the patients on the 12th ward, but says he does not outwardly express it. He claims he has not masturbated since he came here. The capsules he had on the ward, that were found in his spectacle case, he claims

1447 were aspirin; says Morris Doherty gave them to him before he left; says there were 12 and he has taken two, and has 10 left. Patient claims that every time he tries to get any medicine here he has to “sit in the chair”. He says he is friendly with all patients except three or four, who are snitchers—these snitchers are McPherson, Banks and Woodard; says he was put in the room with McPherson because McPherson is a snitcher and is not his friend. Patient states that Woodard tried to get him to have his wife bring hacksaws to them so they could escape; also wanted patient to try to burn out. He says that he purposely put out some wrong information for Woodard and it came back to him from the attendants; says he “has Woodard’s number” when he came here; says he is too smart for them. The patient claims that he has three jobs waiting for him when he gets out—one with a steel company and another with the Fidelity Trust Company of Memphis, with a salary of \$200 a month offered him at the last named

Testimony of Dr. H. B. Brackin

place, to start in with. His superior attitude and ego are more marked now than when he first came to the hospital. His conduct shows the superior man idea, and he hasn't the proper insight.

WARD NOTE: (February 18, 1930)

"Since this patient was brought before the staff on yesterday he has been doing some very big talking on the wards to other patients. He says that his wife will
1448 bring him anything he asks her to and that he is going to have her to bring him a pistol and he going to turn it over to a friend—a patient on his ward, who is going to use it. He also says there are only two or three patients on his ward with whom he is willing to hold a conversation because they are the only ones who have enough sense for him to even attempt to converse with them.

STAFF NOTE: (May 16, 1930)

"Presented for study—Drs. Farmer, Brackin and Love present. Patient appears to be better but he still has an exaggerated opinion of himself; says there is a job waiting for him at \$225.00 per month, regardless of his former record. His judgment is bad. Patient doesn't think that either the attendants or physicians have treated him right—he has been treated like all other patients, but thinks that is not right for him. The staff decided that patient is now in a state of remission, but would not say he is well.

STAFF NOTE: (May 20, 1930)

"On this date Dr. Farmer, superintendent, received a telephone call from Capt. Lyle, Commissioner of Institutions, informing him that all charges against this patient had been nolle prossed and that the district attorney general had ruled that the hospital had no further jurisdiction in the case. Capt. Lyle also sent Dr. Farmer a copy
1449 of a letter from the state attorney general, L. D. Smith, whose opinion was that the commissioner of

Testimony of Dr. H. B. Brackin

institutions might surrender the person of this party to his regular appointed guardian, so the patient was turned over to his father and discharged from the books of the hospital.

"As the patient was leaving he said he appreciated very much the treatment he had received here; that while he formerly thought we were hard on him, he saw now that it was for his own good."

This last page is not a part of the record.

The Court: I believe we are so close now to the adjournment hour we had better adjourn now and come back tonight.

Members of the Jury, remember not to talk about this case to each other or to anybody and don't let anybody talk about it in your presence; and also the admonition about your diet and the way you take care of yourself. We have gone a week and a half on this case and all of you look pretty hale and healthy now and I don't want anything to happen to any of you in the remaining few days we may have to go in order to complete this case. Try to look after yourselves just as you would at your home. Don't let the fact that you are down here at the Brown Hotel lead you into over-indulgence in food in any way.

We will adjourn then and come back for a short session tonight, at 7:30.

1450 Met, pursuant to adjournment, at 7:30 P.M.,

Wednesday, December 8th, 1943, and the following proceedings were had:

The Court: Is Dr. Brackin here?

Mr. Hogan: Your Honor, I wonder if we couldn't in between this recess have that demonstration of that young lady.

Mr. Brown: It is quite all right with me.

The Court: All right.

MARJORIE KIRCHHUBEL was recalled as a witness in behalf of the defendant, and having been duly sworn, was examined and testified as follows:

Testimony of Marjorie Kirchhubel

Direct Examination by Mr. Hogan (Continued).

Q. Now, for the purpose of the record, will you attempt to demonstrate and try to get through that window?

(The witness thereupon left the witness-stand and proceeded to the window, stepped on the toilet seat, unlocked and raised the window, unlocked and pushed the screen aside, and then went through the window, feet first.)

Mr. Brown: I want to ask her a few questions.

The Court: Is that all you want to ask her, Mr. Hogan?

Mr. Hogan: That's all, except let the record
1451 show that she went through the window.

Mr. Brown: With a severe bump on the back of her head.

The Witness: It wasn't very severe.

Cross-examination by Mr. Brown.

Q. Miss Kirchhubel, you say you went to Shawnee High School?

A. Yes, sir.

Q. What athletics did you participate in?

A. I just took gym in High School. I didn't go out for anything else.

Q. Hand ball?

A. No. I never was very athletic.

Q. Any intermural sports?

A. I played a little tennis, that's all.

Q. Any other intermural sports?

A. I played the regular games in High School.

Q. Basketball?

A. Yes.

Q. Volley ball?

A. In class.

Q. Now, have you ever gone through this window before?

1452 A. Yes, sir, and I went through just as well or better.

Q. Oh, you mean you have been through this window

Testimony of Marjorie Kirchhubel

before, this was not the first time you have been through, this window?

A. No, sir.

Mr. Brown: That's all.

Q. (By Mr. Hogan) Miss Kirchhubel, I will ask you if in your early life you had any physical impairment.

A. I had infantile paralysis.

Q. (By Mr. Brown) So you compensated for that by participating in sports?

A. I played in High School. I never went out any extra.

The Court: How old are you, Miss Kirchhubel?

The Witness: Twenty-two.

Q. (By Mr. Hogan) You are not particularly athletic, in other words.

A. Not at all.

Mr. Hogan: That's all. Stand down.

Mr. Brown: That's all.

Mr. Hogan: Call Dr. Brackin.

The Court: Can't we remove the exhibit from the court room?

(The exhibit was thereupon removed from the
1453 court room.)

DR. H. B. BRACKIN resumed the witness-stand and was examined and testified as follows.

Direct Examination Continued by Mr. Hogan.

Q. Dr. Brackin, what is meant by dementia praecox?

A. Dementia Praecox is a mental disorder that begins usually between the ages of fifteen and twenty-five or thirty, usually begins rather slowly, insidiously, slips up on people. It generally begins by becoming indifferent; may have been getting along quite well in school and begin to lose interest. The first appearance, the school teachers may think they are just lazy. Then they probably begin to refuse to obey discipline in school, discipline of their parents, become irritable, then usually become grad-

Testimony of Dr. H. B. Brackin

ually seclusive. After that there is a change in their emotions as pertaining to their thoughts. That's usually one of the greatest points of dementia praecox. Then they may develop delusions, hallucinations, usually ideas of reference are one of the early symptoms. This may continue until their conversation is very incoherent, silly, go through mannerisms, and finally deteriorate, a large percentage of them.

1454 Q. Are there any recoveries?

A. Yes, sir.

Q. In dementia praecox?

A. Yes, sir. There is a certain percentage that recovers, whether they do anything for them or not.

Q. What do you attribute that recovery to?

A. Well, the patient is able to get hold of themselves. There is not any definite thing you can attribute it to. Of course, there are types of treatment that will cause them to recover, but I am not speaking of those types of treatment.

Q. Does nature itself play any part in the recovery of those types of patients?

A. Well, it may do that, and then, of course, the patient gets occupied, occupational therapy, which is, of course, a type of therapy, but if the patient is at work he can get his mind off these difficulties that he has had.

Q. What is a delusion? You used that term a moment ago?

A. Delusion is a false idea.

Q. Now, let's assume that we know nothing about delusions. Will you kindly enlighten us, please, sir, on what a delusion is, by giving some example, if you care to.

A. Well, there are paranoid delusions which are very common. It is an idea that people are mistreating
1455 you, have it in for you, when there is not any basis for it.

Q. That's an idea or, as you say, a delusion upon a false premise?

A. That's right. That's what is spoken of as a delusion persecution.

Q. What is usually the first manifestation of demen-

Testimony of Dr. H. B. Brackin

tia praecox?

A. Indifference, I would say. It is usually a result, we think so, of failure to get along with different situations that come up in life, and as they fail to handle these situations properly then they finally become indifferent.

Q. Now, taking Tom Robinson's case for a concrete example, do you consider that this shock from this forced marriage played any part in his deterioration or change in personality?

A. Personally, I don't know. Something was responsible, and that occurred about that time. It is possible that it did.

Q. Was that such a type of shock or change that could have or probably could have brought about his change in personality?

A. It could have, either domestic, or financial, or any type—death in a family, sometimes, any type of shock.

1456 Q. Now what is an hallucination?

A. Hallucination is believing that you hear a voice, or see a person, or feel something that is not present there. There are several types of hallucinations—hallucinations of hearing, hallucinations of sight, hallucinations of smell, touch.

Q. The hearing hallucination is commonly termed an auditory hallucination?

A. Yes, sir, that is correct.

Q. And the sight, you medical men call it a visual hallucination, do you not?

A. That's correct.

Q. Have any reference to delirium tremens?

A. They are very frequent in delirium tremens, vision hallucinations.

Q. Blue monkeys and white elephants?

A. Yes.

Q. What is a psychopathic personality?

A. A psychopathic personality is a person who is abnormal from birth or very early childhood. He is abnormal usually emotionally, morally, ethically, but not to the place to be certified as insane except in episodes.

Testimony of Dr. H. B. Brackin

Q. Is there any difference between a psychopathic personality and a constitutional psychopath?

A. No. There are about a half dozen names that
1457 are used for that. That means approximately the same thing.

Q. What type of person would you classify as a psychopathic personality or a constitutional psychopath?

A. I didn't quite finish my definition, and I will answer that question. I didn't say that they are not defective intellectually. I said they are defective emotionally, morally and ethically, but not necessarily intellectually.

Now the type of people that's classified as psychopathic personalities is a great conglomeration. They throw everything into the rain barrel, so to speak—kelptomanias, pyromanias, sexual perverts, drug addicts, alcoholics, pathological liars, swindlers, and so forth.

Q. What is the distinguishing difference between a psychopathic personality and a dementia praecox in regard to recovery and in regard to inception of the diseases or conditions?

A. A psychopathic personality does not recover because he was born with an inferior constitution and he is not going to recover from that inferior constitution. Dementia praecox may recover. A small percentage of them do recover. Now, as to the beginning—a psychopathic personality begins, as I said, at birth or in very early childhood, while a dementia praecox does not begin until
1458 around fifteen or sixteen years of age on up to, say, thirty.

Q. Now, you have diagnosed Tom Robinson, Junior's case, or, rather, did diagnose his case in 1929, was he in your opinion a dementia praecox then?

A. Yes, sir.

Q. Was he, in your opinion, then a constitutional psychopath?

A. No, sir. We have got no history of anything abnormal in his life up until the time his break came when he was in school.

Q. So that is the distinguishing difference, a psychopathic personality or constitutional psychopathic patient

Testimony of Dr. H. B. Brackin

or person is born that way, whereas the dementia praecox develops it or turns into it at sometime beginning, as you say, fifteen years and up.

A. That is correct.

Q. You mentioned delusions a while ago, Doctor. Are there any such things as systematized delusions?

A. Yes, there are. Those delusions are usually of a persecutory nature. They get ideas that people are mistreating them and they hold to that idea and it is not very changeable, and it becomes systematized, as we speak of it.

Q. Even though the delusion is based upon a false premise?

1459 A. That's correct.

Q. Does the patient or person usually hold to those ideas?

A. That's correct.

Q. Now, is there such a thing as a subjective mind?

A. Well, that's—yes, that's part of it.

Q. Isn't that the mind or that type of mind or state of mind in which the ideas are formulated?

A. That's correct.

Q. Now, I will ask you if the objective mind is not the mind that carries into effect the ideas that are formulated in the subjective mind.

A. Yes, sir.

Q. I'll give you an example and you tell me whether it is right or wrong. In my subjective mind the idea is formulated that I should walk through that door, and objective mind causes me to get up from this seat and walk through that door. Now is that a coordination of the subjective and objective mind?

A. Yes, sir.

Q. Now, with those types of mind before us, what about these paranoid types of dementia praecox with reference to their control over their willpower?

A. Well, they can't do what they know they should do, very frequently.

1460 Q. Do you mean that they have no willpower to control their actions?

Testimony of Dr. H. B. Brackin

A. Well, there is quite a difference in their thought and their emotional reaction, it is not properly balanced, and they think to do one thing but their emotions cause them to do the opposite. You may tell something that's very serious, and in place of having a long face and feel sorry, probably they will laugh in a very silly manner.

Q. Is that what is known as a hebephrenic type?

A. Well, that occurs in the hebephrenic type, but not necessarily just in that type. As far as the different types of dementia praecox, is it very seldom that you ever get one true pure type. In other words, to say that they are all paranoid, or all hebephrenic, all catatonic, or all simple, it is seldom the case. As the usual thing you have some of—two or three in every person that is diagnosed dementia praecox, and we usually try to type them by the one that has the majority of the symptoms.

Q. Is it possible in dementia praecox to have two very opposite personalities, that is, is it possible to have, say, the super-man or grandiose personality and in the same person to have a persecuted or persecutory type?

A. They usually go together.

1461 Q. That's what constitutes the schizophrenia, is it not?

A. That's part of it; yes, sir.

Q. What is schizophrenia?

A. Well, schizophrenia is the same as dementia praecox. It is name that was given to it by Bleuler, which means a dual personality.

Q. Split personality?

A. That's right.

Q. Jekyll and Hyde.

A. Yes, sir.

Q. One day or one moment one thing, another moment or another day an entirely opposite personality, is that right?

A. Yes, sir.

Q. From what you know of Tom Robinson, Jr. and his condition, would you say that he was a paranoid type of dementia praecox?

A. We didn't type him. We said that he was a case

Testimony of Dr. H. B. Brackin

of dementia praecox. He had a great many of the paranoid characteristics, but the statement which we gave to the court and which we made at the hospital, we didn't specify because we thought he had some of the other types too, and the different types doesn't mean a great deal.

Q. Now this syphilis condition that you read
1462 about in Dr. Gayden's statement, would that ordinarily, considering what you already knew of Tom Robinson, Junior's condition, aggravate his dementia praecox or would it help it in any way?

A. Well, it would probably aggravate it. However, he didn't have syphilis when we had him.

Q. No, he did not contract that, or, rather, the record does not show he was treated for that until 1932.

A. His blood and spinal fluid were both negative when we had him.

Q. Assuming that he in 1932 or sometime prior thereto had contracted that disease, would you then say what you already knew about him, that the syphilis aggravated his dementia praecox conditions?

A. Well, it certainly couldn't help it any.

Q. Assuming that, without repeating all of those facts and matters and things contained in that history chart or hospital chart that you had and read before the dinner period this evening, and assuming the facts and report to be true that you and other doctors in June, 1929, reported to the Criminal Court, Circuit Court of Davidson County, Tennessee, and assuming that after Tom Robinson was in the institution at Central State Hospital for the insane, having been adjudicated an insane person and legally committed to that institution; and assuming that after

1463 he was released from that institution, either just before that or just after that, speaking, of course, of the Central State Hospital, that he was again adjudicated an insane person by a court of the Davidson County, Tennessee; and assuming that his father, Thomas Robinson, Sr., was appointed his legal guardian; assuming that this legal guardian had this Tom Robinson, Jr. committed to Western State Hospital for the Insane at Bolivar, Ten-

Testimony of Dr. H. B. Brackin

nessee; and assuming further that his father some three months thereafter effected or procured, or obtained or had his release from the Western State Hospital over the strenuous objections of Dr. Cocke, then Superintendent of that institution; and assuming further, Doctor, that after Tom Robinson, Junior's release from that last institution named, that his father took him on the road in an effort to stabilize him by taking him on trips in the car, and that afterwards Tom Robinson obtained a position with the Wayne Lumber Company, for which he worked some time but quit or was discharged; and assuming further that his personality changed, that he was given to tantrums and violent fits of temper at home and cursed and abused his parents, whereas formerly he was an obedient child and son; and assuming that his married life was stormy, and that he, while married to his second wife, went into violent rages and tore her dress off of her on one or more occasions, and that he tore his shirt

1464 into shreds; and assuming further that he did not stay employed in any one occupation or endeavor for long, that he was either unsatisfactory and he quit or was discharged; and assuming further that he was, or believed he was, the reincarnation of Patrick Henry, and that he felt or entertained the delusion that Patrick Henry had been reincarnated into his body or personage; and assuming that he felt that as this reincarnated Patrick Henry that it was his duty to carry on where Patrick Henry left off some years before; and assuming that in the year 1931 he came to Louisville, Kentucky, and obtained employment with the Stoll Oil Company here as a filling station attendant, and that he worked at that position for some six weeks, and that he quit voluntarily, that he then went to an insurance company as a debit or route man, that he then gave up that job or was discharged because he either disliked it or his services were not satisfactory, and that he at various times went to different jobs and to different places, and back and forth to his home in Nashville; assuming that he at one time worked for the DuPont Company just outside of Nashville, and that he got involved with some women who

Testimony of Dr. H. B. Brackin

charged him with obtaining their jewelry or in assaulting them; assuming that those charges never resulted in his prosecution; assuming that he was or felt himself to be a super-man, super-type, and that he went to Chicago and procured employment as a janitor in an apartment hotel or house, that he went to South Bend, Indiana, and was either unemployed in that type of work or was not employed for any length of time; and assuming that he endeavored from time to time over a long period to get various positions, that he made applications for various jobs, and that when he was in those positions he thought he could run their business better than they could run it themselves, and that he tried to install and implant his own ideas in those institutions; and assuming that he has given as reference, among others, Mr. C. C. Stoll, his former employer here in Louisville; assuming that his inability to obtain employment aggravated his already impaired mental condition, and that he then assumed in his own mind an idea that C. C. Stoll was persecuting him and following him and blocking his efforts to obtain employment, and that he made so many applications for employment that he decided to write a book on how to get employment, that he felt that he could by reason of his having made so many applications, could direct others in that field although he, himself, had failed; assuming that he went to Chicago, rented a Ford automobile under the pretense of meeting his aunt from Nashville, Tennessee; assuming that he took this automobile and did not return it; assuming that he went to Indianapolis, Indiana, that he rented an apartment under an assumed or alias name; assuming that in Chicago or South Bend he probably used assumed names; assuming further that while in this apartment in Indianapolis, Indiana, he used a Corona typewriter and two pages of legal sheets on which he prepared this ransom note:

"TO THE MEMBERS OF THE STOLL FAMILY:

"WARNING: Stoll has been kidnaped for ransom. Overcome your first natural impulse to call in the police. Otherwise, you will regret it.

Testimony of Dr. H. B. Brackin

"The life of Stoll, and later on the lives of his sons and their families, depend on the Stoll family reading this letter thoroughly and obeying our instructions from the beginning and for all time thereafter.

"Read this letter and you will realize that we mean business. We want the money, not the life of Stoll, but if you let the police know the details of this letter, or where payment of the ransom money is to be made, or if there is any evidence that you mean to double-cross us by sending a dummy package, watching the intermediary named in this letter, or otherwise try to set a trap for us, we are prepared to do this:

"Kill Stoll and burn his body; scatter his ashes in a stream of water; clean the galvanize tank in such a manner as to defy a microscopic examination of it. There will be no ashes left to analyze. This will keep the law
1468 from finding the corpus delicti, or body of Stoll.

"This is no idle threat. We are fully aware that kidnaping is punishable by death in Kentucky, and also we would be subject to the death penalty under the Federal Law, or Lindbergh Law, if we were forced by the publicity to take Stoll or his body over a state line. However, the capitalists with their power got this law passed, as it could not be wrong to rid this country of the capitalist, or make him share his money with his less fortunate brothers. It would be an act of patriotism to kill this capitalist, Stoll, who was overheard to say, concerning Roosevelt and NRA, 'Mr. so-and-so, we are in the hands of a dictator. We capitalists do not know what to look forward to; we are conserving our money; why, I would not spend one dime to even paint up my filling stations.' No, he wouldn't, but he will spend plenty to get returned to his family alive. He is really in the hands of a dictator now. It is this octopus, the capitalist, who is menacing the very foundations of our country. It is a serious mistake for right-thinking men to declare it an offense to kill or kidnap for ransom a capitalist.

"However, we cannot aggravate our offense any by killing Stoll, if we have to. He is the main witness against us, and his body could not be produced, so the law could

Testimony of Dr. H. B. Brackin

not prove we killed him.

1469 "We are taking Stoll to our farm. We have already been told that we would be dispossessed within ten days for not paying rent. Our money is low. We are not able to feed ourselves for long, much less Stoll. We are just about as desperate as once-respected working men can get, harassed as we are by capitalists such as Stoll, Mellon, Morgan, Insull, etc.

"From these conditions, there is no time for a bunch of negotiations between us, other than those in this letter. No bargaining.

"In the kidnappings of Baby Lindbergh, William Hamm, Jr., Jake Factor, Charles F. Ulrich, Nell Donnelly, Charles Boetcher II, etc., the police were called in and the federal men too, yet the families were forced to pay the ransom money, because the police were unable to solve the cases in time to prevent payment. The police only delayed the return of the victim, and caused more suffering all around. Once you call in police, you cannot get rid of them when you discover that they cannot bring your father back, and you would like to go ahead and pay the ransom as directed, but they won't let you contact the kidnapers.

"You cannot deal secretly with the police, either. There is always some crooked cop who will tip off a newspaper reporter for a sum of money.

1470 "You would be unable to catch us in time to save the life of Stoll. We are not the average run of criminal, as you have found out. The police cannot go out to some pool hall and round up our gang. We have no record. It is useless to look in the conventional Rogues Gallery for our pictures. Our job is too carefully planned and executed. Police will waste your time having you run down to the station to look over suspicious or known criminals. Then it will be too late for you to save Stoll's life. We cannot wait over a week for our money.

"Results of having to kill Stoll: Besides sentimental reasons, the family will not be able to collect his life insurance, because you cannot furnish proof of death, as there is no corpus delicti; his business will suffer from lack of his leadership and prestige; the bank loans are

Testimony of Dr. H. B. Brackin

based on the strength of his life insurance, and when they find out how he was done away with, and that his insurance cannot be collected, they will press the company for more collateral on their loans.

"Complete instructions for payment are on next page: Turn over.

Amount of ransom \$30,000, \$15,000.00 to be in \$10.00 bills and \$15,000 to be in \$20.00 bills. Put this money in as small a paste-board box as possible pack and wrap it carefully so that it will be accepted by the Railway Express Agency; declare the value of package at \$10.00; do not state what it really contains.

"Address it carefully and plainly; then send it by Railway Express only, to the intermediary who Stoll and one of our members agree on before he is taken from the house.

"This intermediary's name will be filled in at the bottom of this page by Stoll. It will have to be one of several business men living in Nashville, Tennessee, who we know to be a friend of Stoll, and who we are prepared to watch in order to see if you try to set a trap for us. We will allow Stoll to choose one of these men.

"This intermediary must have absolute freedom from police. He must not even be questioned by anyone. You must not correspond with him. If he is put wise, the deal is off, and we will carry out our threat as to Stoll. We must have a clear opportunity to contact the intermediary. We cannot do that with police surrounding the house. If they do, you can take our word that we will know of this fact in advance, and then we will make no effort to collect the money, but will then do what we have said we would about Stoll.

"Starting the day after the kidnaping, we give you five days, including a Sunday, to get the money into the hands of the intermediary. This means that it must be sent on the fourth day in order to arrive on the fifth. Do this sooner, if possible, as the sooner Stoll is returned, the easier it will be on him.

"Then, just as soon as we get the money into our hands, Stoll will be released unharmed. To this we give you our

Testimony of Dr. H. B. Brackin

word.

"We will call Express Agency in Nashville and see when your package arrives. We will call from a pay station far from where we hold Stoll.

"Do not take the serial numbers of the money. If you make any publicity of this case after Stoll is returned, or try to catch us in any way afterwards, we will shoot down your family from our car with a 30-30 rifle.

"Do not waste our time or yours trying to reduce the ransom. You can get \$30,000 or else.

"There can be no other negotiations. We do not have time to bargain. If you delay and stall for time, we have told you our position, and what must happen to Stoll. We have no other alternative if we do not receive the money. This job is so arranged that no one outside the Stoll family will know what has happened at the start. It is for you to keep it that way.

"Explain Stoll's absence as illness or say he is out of town.

"If this is given to police or press, nothing can save Stoll.

1473

"Name of Intermediary"

and the words "to be filled in by Stoll" were later scratched out, either by pen or pencil, and the name of the intermediary is inserted, or was inserted by the defendant himself as being "T. H. Robinson," the father of this boy, "Street 1716 Ashwood Ave., Town, Nashville, Tennessee."

"We assure you that package of money, will not get into wrong hands so do not try to contact this man, as it may upset plan of pay-off."

Assuming that he, after preparing that type of ransom note and with the idea or inspiration that he should kidnap Stoll, and that he was being motivated to do it by this delusion that he had or this persecution that Stoll was persecuting him and preventing him from getting jobs, and that he drove in this automobile that he had rented in Chicago, but had not returned to its rightful owner; that he came

Testimony of Dr. H. B. Brackin

to Louisville on October 8th, stopped at the Tyler Hotel, and that he first went to the home of C. C. Stoll and did not find him there, but instead found a maid; that using as a pretense to gain admission to C. C. Stoll's home, he declared himself to be a telephone company employee or representative, and that he had come to check the phone, that not seeing C. C. Stoll or his wife, Mrs. C. C. Stoll, that he went next door to the home of George Stoll, and

that he was admitted to that home by the nine
1474 year old daughter of George Stoll and by Mrs. Stoll, who was thereabouts; and that he used a similar

pretense to gain admission into that house and went upstairs and pretended to be checking the phone on the second floor of that house, but that he left without carrying into effect any idea there; that he went on October 10th to the garage on Bardstown Road and inquired of a way to Berry Stoll's home, and said that he had been there some months before, but had gotten misdirected or did not remember exactly where Berry Stoll's home was, and that he told this employer or garage man that he did not want to use the River Road to go there, and that he went to the Berry Stoll home on Lime Kiln Road on the afternoon of October 10th, 1934, and used as a pretense to gain admission to that home that he was a telephone employee, and that he there encountered the maid at that home, and that he there saw Mrs. Stoll whom he claimed he knew but which it is denied, and that he under a pretense to get to the extension phone went upstairs and there located Mrs. Alice Stoll in her guest room, and that there was some conversation, and that she said to him, "What are you doing here?" and that he responded, "I am here to kidnap you," and that Mrs. Stoll responded, "My husband will soon be home and you must not be found here,

1475 and I will offer you a check for a sum of money; but which was never indicated nor filled out, and that he proceeded to bind the maid and loosely bind Mrs. Stoll or, as it is claimed, he tightly bound her and put adhesive tape over her mouth, and that he struck her with an iron pipe, which is very much in dispute and is denied by him, and that the blows from the pipe on her head caused con-

Testimony of Dr. H. B. Brackin

siderable bleeding, which is also vigorously denied by him, and that he left the maid in a bound condition in that apartment, or home, or room, and that he then left with Mrs. Stoll and took her to the apartment in Indianapolis, Indiana, and that he before leaving left this ransom note, not in its original prepared state but changed to this extent, "Intended for C. C. Stoll at first and Mrs. Speed," and on the second page, "Same for Mrs. Stoll except amount \$50,000.00," with the amounts corrected as indicated, and that Mrs. Stoll was kept with him at the apartment in Indianapolis or stayed with him, the fact of which is in dispute, for some seven days, and that upon the seventh day after some letters had been written in regard to the ransom money mentioned in this letter, that a sum of ransom money was delivered by his wife, Mrs. Frances Robinson, and that he left that apartment after taking from that ransom money some sum of money which is likewise in dispute, and that he drove away in his then stolen automobile or the stolen automobile which he

1476 had been using; that his first stop was Springfield,

Ohio, that he used an assumed name at that point, and that he went from there to New York City where he stayed at the best hotels, including the New Yorker, some St. George Hotel in Brooklyn, and some others, and that he was there in New York for a period of time and did not try to conceal his identity in any manner; that he went to the polo grounds, baseball park, with a friend that he had met at Rye, New York, or the beach cottage at Rye, New York, and that he then associated himself with the person by the name of Jean Breese, a New York girl, and that he before meeting Jean Breese frequented night clubs and made acquaintances openly and without any pretense of deception or detection, or disguise, and that he used assumed names to register in apartments and hotels, and that he then went to California, and before going to California that he bought a Plymouth automobile, that after he went to California he bought a Packard automobile, and that he came back across the country in one of those automobiles mentioned, and then went back to California, and that he rented a bungalow type of home there at the rate of

Testimony of Dr. H. B. Brackin

\$150.00 per month, and that before doing so he had stayed or registered at some hotels, that he had changed the ransom money into cold money, as it is termed, or washed it to obliterate the finger-prints, that he would wire

1477 money ahead to change its form from ransom into cold money; that this woman in California who rented him the bungalow or home was taken away with him, sold on him a hundred per cent, and thought he was it, and that he had a contact with this woman out there for a period of about a week in which period she took him from place to place, demonstrating or showing him various homes; that during all that period that he left the apartment at Indianapolis he was under an assumed name; that on May 11th, 1936, after his whereabouts had been divulged by the woman with whom he had associated himself and had been over the country, turned him up or turned him in, as is sometimes designated, to the FBI in Los Angeles, and that he was brought back to Louisville by airplane, taken from Bowman Field, kept in the Starks Building all night of the 12th,—all day of the 12th and all night of the 12th, and most of the day of May 13th, and was brought out to federal court in this very court room, shackled and under heavy FBI guard, and was handcuffed, and that he was denied counsel; that his mother was here and was hysterical; his father finally arrived here, but was intoxicated; that he did not have an attorney to assist him or advise him to plead one way or the other; and that he had twice been adjudicated insane and had not been restored; and that he was taken from here and

1478 placed in the penitentiary in Atlanta, then Leavenworth, then Alcatraz, where at the latter place he spent some between six and seven years—I will ask you, assuming all of those facts to be true, Doctor, whether in your opinion Tom Robinson, Jr. was suffering, on and after and before October 10th, 1934, from such a perverted and deranged condition of his mental faculties as rendered him incapable of distinguishing between right and wrong or unconscious at such time of the nature of the acts charged in this indictment, and I will assume further that he was

Testimony of Dr. H. B. Brackin

indicted and brought to trial here and pleaded not guilty, while committing these acts or where, though conscious of them and able to distinguish between right and wrong, and to know the acts were wrong, yet his will, his governing power of his mind, was otherwise than voluntary, and whether or not it was completely—his will was so completely destroyed that his action was not subject to it, but beyond his control.

A. I would say that he knew right from wrong, 1479 and I think he knew right from wrong when I had him at Central State. I think the majority of insane patients do know right from wrong, but that he couldn't do right because of his mental condition. I would feel that, assuming the things to be correct that you have told, that he had not recovered from the mental condition which he had when we had him in 1930.

The Court: Well that was not the question that was asked, Doctor.

Witness: It wasn't?

The Court: No. He didn't ask you whether he had recovered or not. He asked you—repeat the question again.

Q. I asked you, if he did know right from wrong, whether he had the control over his will and governing power to keep and prevent him from doing the things that he, as you say, knew to be wrong?

A. Well I don't think he had the control over his will, because he didn't have when we had him, and I don't think he did there.

The Court: I think first that I had better instruct the jury that the facts given in the hypothetical question by Mr. Hogan are true for the purpose of the question. The jury will not take the position that all such facts 1480 have been proven. Some of them have been and some of them may have been contested.

For the purpose of this question they are merely assumed. I don't want the jury to believe that they are admitted by either side, all of them. Whether or not they do exist will still be a question for the jury to decide.

Mr. Hogan: That is all.

Testimony of Dr. H. B. Brackin

Cross-examination by Mr. Brown.

Q. In other words, you think Robinson knew the circumstances of any criminal act which he had or might commit?

A. Yes, sir, I think he did.

Q. And you think he knew right from wrong?

A. Yes, sir.

Q. Now what type of dementia praecox or schizophrenia do you think Robinson was in 1930?

A. Well, we didn't type him.

Q. Well, just type him now?

A. Well if we could say that he was definitely one type we would have said so then but we considered him a mixture.

Q. Of what type?

1481 A. Of the paranoid type and of the catatonic type and of simple type.

Q. What do you mean by "catatonic type"?

A. A catatonic type is one that apparently goes into excited stages without any apparent reason. Of course, there are many other things about it, but that particularly applies to him and we had had a history of him doing those things with his family.

Q. Now you are basing largely your diagnosis of the catatonic type upon the history given to you by himself and members of his family aren't you?

A. That is correct. He didn't show any indications of excitement during the time that we had him in the hospital.

Q. As a matter of fact, that catatonic type is characterized by stages of stupor or excitement, isn't it?

A. Yes, sir. He was not the catatonic. You asked me what he had of those different types. If he had been catatonic, of that type, we would have diagnosed him.

Q. Now of the types that there are, which classification of schizophrenes would bring him into either the paranoid or the catatonic or hebephrenic type.

A. Paranoid.

Q. Now, Doctor, if that was true, what reasonably might you expect Robinson's condition to be

1482

Testimony of Dr. H. B. Brackin

today?

A. Paranooids deteriorate rather slowly—more slowly than do others, but after this number of years you would expect, in a large percentage of cases, to be deteriorated.

Q. Very decidedly?

A. 85% to 90% of the cases.

Q. Now, looking over there, he does not appear to have deteriorated that way?

A. I wouldn't want to pass on him because I haven't examined him.

Q. Aren't they very careless in their appearance?

A. Yes.

Q. And suffer with extreme delusions?

A. Yes.

Q. Now, Doctor, let's see if—in the constitutional psychopath or psychopathic personality there are certain subdivisions? Doesn't Dr. Kahn represent that?

A. There is no accepted psychopathic personality.

Q. It is a sort of a waste basket—

A. (Interrupting) That is exactly what it is. It is a very unsatisfactory diagnosis and a very unscientific one.

1483 Q. That is not a mental defect is it? That is a character defect, isn't it?

A. They are not mentally deficient. They are intellectuals—usually brilliant.

Q. And it is more of a character defect, more than anything else?

A. Well yes, emotionally and morally, and ethically.

Q. Aren't about 40% of the adult criminal population of the United States, where you have repeated offenders, made up of that type or not?

A. I wouldn't say.

Q. You wouldn't want to hazard a guess on that, would you?

A. No.

Q. You do know that a large number of criminals are psychopathic personalities?

A. Yes.

Q. A large percentage of them?

Testimony of Dr. H. B. Brackin

A. A large number of psychopathic personalities are criminals, but all criminals are not psychopathic personalities.

Q. Yes. Now there is one classification of psychopathic personalities that is called pathological liars and swindlers, isn't there?

1484 A. Yes.

Q. Now let's read this: "They are egocentric individuals whose social maladaptation consists of extravagant, often apparently purposeless lying, frequently combined with swindling. They exhibit a marked excitability of imagination combined with an instability of will. They are usually good-natured, of agreeable manners, optimistic, of a light-hearted geniality, and make social contacts easily. These qualities and ready tongue, self-confident manner, a frequently assumed dignity and a misleading appearance of knowledge readily enable them to convince the credulous as to their statements. They acquire a smattering of art, literature or technical parlance which they employ to their own profit and to the expense and humiliation of their victims. They spin remarkable tales as to their past experiences and paint their future with a careless disregard for reality. Some are guilty of sex offenses and others obtain large sums of money under promise of marriage. When discovered in their delinquencies they profess amnesia, and if charged with legal offense they often stage an emotionally affected exhibition designed to impress observers and arouse sympathy. They are restless and unstable, and are capable of exertion or responsibility. They never learn to meet the struggle for existence with industry and perseverance but live in a world of
1485 imagination and seek to acquire the necessities of life by deceit and fraud." Now isn't that a fair statement?

A. That is a good statement of a pathological liar.
Mr. Brown: That's all.

Redirect Examination by Mr. Hogan.

Q. Have you any reason to believe now, or did you have any reason to believe in 1929, from what you have

Testimony of Dr. H. B. Brackin

known and the facts to be assumed, that this defendant is a pathological liar?

A. No, sir, I never caught him in any lies.

Recross-examination by Mr. Brown.

Q. As a matter of fact, wasn't there a considerable discussion down there between the staff whether this man had a dementia praecox or pathological personality?

A. Yes, there was some discussion of a pathological personality. We always discuss all the possibilities.

Q. And at that time your hospital did not have any social workers to make investigations for it?

A. No.

1486 Q. Didn't you have to rely, almost exclusively on the case-history as related to you by his father and mother and his wife?

A. And his attorney.

Q. And his attorney. Now, as a matter of fact, Doctor, if there had been known to you at the time that you made your diagnosis that up to the time he was admitted to the asylum or within a short time prior thereto, that Robinson had been carefully provided for by his family; that he had been given all the necessities of life, and raised under favorable circumstances, and up to a period of approximately two years before that he had not been in any financial want and therefore found no need to deviate from the normal to secure money or the wherewithall to purchase luxuries or to satisfy his wants to such an extent as to discourage any criminal act upon his part, might not that fact, if it was known to you, made a very different picture of your diagnosis?

A. Yes. We would have had to know, though, at what age those things started, whether they started in very, very early life or whether he had been abnormal from birth or very early childhood. We got no history of any abnormality up until puberty and beyond puberty.

Q. But if you had known that Robinson, at the
1487 age of 16, had been supplied with a car that cost about \$800.00; that he had been furnished with all the luxuries or necessities that he might want; that he

Testimony of Dr. H. B. Brackin

was the only child of his parents; that in 1927 he married; that this so-called forced marriage may or may not have had any effect on him; that in 1929, January 1929, six months before he was committed to your institution he was married again; that he and his wife desired to set up a home of their own; that they wanted to move away from his parents' home and did not want to live in her parents' home; that they wanted to acquire an apartment of their own, and there for the first time he was faced with the necessity of providing for a family of his own and of taking care of himself and, facing those facts, if you had known that he had committed two robberies, might that have made any difference in your diagnosis?

A. When were the two robberies? How early in life?

Q. Shortly before he was committed to your institution and within a period of 3 months when he first began to need these necessities of life—the money to provide him with the necessities and luxuries of life?

A. It was our impression that the change came more from the stress of difficulties in life that he was not able to meet, and that he did not show anything abnormal early in life. We discussed the psychopathic personality. However, we believed he was insane, regardless. It was a question of whether or not it was a psychosis or a psychopathic personality. It was the paranoid type.

Q. Yes. I understand that, but I am asking you if, assuming all of those facts which I am asking you to assume to be true, would you have made a different diagnosis?

A. Not unless they were earlier.

Q. What do you mean by "earlier"?

A. Well it was my impression that you said they came a year or two before he came to the hospital.

Q. Well they might have come 8 or 10 years before he came to the hospital?

A. Well, that is probable. If they came early in life, certainly I would have.

Q. You mean your diagnosis might have been different?

A. Yes.

Testimony of Dr. H. B. Brackin

Q. But if he had been provided with all of the necessities and luxuries, would there have been any necessity to have committed crime for money?

A. There wouldn't. However, psychopathic personalities do things that there is no necessity for.

1489 Q. Yes, but I am asking you, might not his diagnosis have been psychopathic personality?

A. If he had started those things early in life.

Redirect Examination by Mr. Hogan.

Q. How early in life?

A. That is a difficult thing to say. A large percentage of them begin in early life. A large percentage of them begin getting into difficulties in grammar school and steal little petty things in grammar school.

Q. When 8 or 9 year old kids begin breaking windows, etc.?

A. Maybe not breaking windows, but they begin to steal and lie, etc.

Recross-examination by Mr. Brown.

Q. He begins to steal when the necessity of getting what he needs is denied him?

A. Not necessarily. I have seen psychopathics that stole in grammar school when their families provided everything for them.

Q. But they get into major crimes only when they are deprived of the necessities, don't they?

1490 A. I don't know whether I am an authority on that or not.

DR. THOMAS J. CRICE and DR. LEON L. SOLOMON were called as witnesses by counsel for the defendant and, after having been first duly sworn, they were examined and testified as follows:

Direct Examination of Dr. Crice by Mr. Hogan.

Q. What is your name?

A. Thomas J. Crice.

Q. What is your business or profession?

Testimony of Dr. Thomas J. Crice

A. I am a physician.

Q. From what school or schools are you a graduate?

A. I am a graduate of the University of Tennessee in 1907.

Q. In what branch of the University of Tennessee.

A. Medical Department.

Q. Are you now a regular practicing physician in the City of Louisville, Jefferson County, Kentucky?

A. Yes, sir.

Q. How long have you been such?

A. About 34 years.

Q. How old are you?

A. 62.

1491 Q. Following your graduation from the Medical Department of the University of Tennessee, I will ask you if you had any other special training or internship?

A. I located near Paducah, Kentucky, my old home and practiced medicine two years after I graduated in medicine. At that time I received an appointment as assistant physician and assistant superintendent for the Central State Hospital for the Insane at Lakeland from 1909 until the latter part of 1912. After that service I located in Louisville. I practiced what we know as general medicine here about 22 or 23 years. After that time I began specializing in mental diseases. I taught psychiatry or mental diseases in the Sts. Mary and Elizabeth Hospital in this City for 16 years. I was appointed Assistant Psychiatrist in the Criminal Court in Louisville about 7 years ago. I then associated with the psychiatric staff in the Louisville General Hospital for nearly seven years. Aside from a general practice of mental diseases, I am in private practice.

Q. Are you now on the staff of the Jefferson County Lunacy Commission?

A. Yes, sir.

Mr. Brown: I don't believe I know what that is. I have never seen that in the statutes.

The Court: Well, is there any such Commission?

1492 Mr. Brown: No, not according to the statutes.

Testimony of Dr. Thomas J. Crice

Q. State your duties?

Mr. Brown: I would like to know what that is.

Witness: I have just said that I am a member of the Commission of Associated Psychiatrists for the Criminal Court here in Louisville.

Mr. Brown: Are you appointed by the Judge to examine one week and certain other doctors are appointed to examine another week?

Witness: That's right.

The Court: Well, each appointment is for a specific case, isn't it? There is no standing appointment, is there?

Witness: We serve once a month.

The Court: One day a month?

Witness: About two and half or three days in examining cases and appearing in court. And there are two other physicians that appear once a month.

The Court: Well, do you know whether or not the appointment is an individual appointment for each individual case? It may be the practice on the part of the Judge to make the same appointment, for two or three days in succession, but isn't there an appointment for each particular case?

Witness: I would assume—

1493 The Court: Well, do you know?

Witness: My appointment is to examine cases that are up for consideration or committment in the criminal court.

The Court: Well we know that, that is why you would be over there, to examine those people. But what we are interested in, are you appointed for a period of time or just for one particular case and then reappointed for the next case?

Witness: No, sir, it seems to be, as well as I can understand it, an appointment to examine people to be committed to various institutions.

The Court: Unless you gentlemen can agree on it I think you had better get the statutes. I think the order of appointment would control.

Mr. Hogan: Can you enlighten us on that, Dr. Solomon?

Testimony of Dr. Thomas J. Crice

Dr. Solomon: Dr. Crice and I are on duty and are paired under the statutes to examine those against whom there has been a filing for lunacy, and we serve for a period of 2 weeks. We went on duty yesterday afternoon and we will go off duty two weeks from yesterday afternoon, next Tuesday a week we will go off duty for a period of 2 weeks and then we are back on duty, but the ap-
1494 pointment, Your Honor, is continuous. And frequently during the period when we are not on active duty we are asked by the Judge to see special cases.

The Court: I have no doubt that that's true, but the question was whether or not you are a member of a Commission?

Dr. Solomon: We are a member of the Lunacy Commission for Jefferson County.

The Court: Or whether you were just individually appointed for each particular case. The statutes can be consulted over night and see whether there is any such thing as a Lunacy Commission.

Mr. Brown: Yes.

Q. Dr. Crice, from the time you were graduated from the University of Tennessee, have you had occasion to and have you diagnosed and treated many or few mental cases?

A. I have diagnosed and treated many cases.

Q. Do you have any idea how many?

A. That would be pretty hard to estimate. While I was serving at the Central Hospital for the Insane at Lakeland I examined and treated 400 or 500 new patients a year aside from caring for several hundred others. Since I have been limiting my practice to psychiatry, I see probably a dozen cases of mental diseases a week,
1495 sometimes less, in my private practice. I see from 25 to 30 for adjudication at the criminal court per month. I see a few cases in consultation with other doctors.

Mr. Hogan: Now, if Your Honor please, do you want me to stop with this witness and qualify the other doctor?

The Court: Are you going to ask that question again?

Mr. Hogan: That long question?

The Court: Yes. I want you to ask it to both of them

Testimony of Dr. Leon L. Solomon

at the same time.

Mr. Hogan: I wish I had that question written up so I could read it.

The Court: Well if you are going to ask that question, qualify Dr. Solomon too and then ask them that question both at the same time.

Mr. Hogan: I really would prefer to have that long question written up.

The Court: All right.

Mr. Hogan: I will just ask Dr. Solomon his qualifications.

1496 Direct Examination of Dr. Solomon
by Mr. Hogan.

Q. State your name?

A. Leon L. Solomon.

Q. Where were you born, Doctor?

A. Louisville.

Q. Have you always been a Kentuckian?

A. I have lived in Kentucky throughout my lifetime.

Q. From what school or schools are you a graduate?

A. I am a graduate of the Medical Department of the University of Louisville. I am a graduate, I hold a diploma, from the University of Berlin.

Q. Have you engaged in the practice of medicine and psychiatry since your graduation from any of those colleges?

A. I have been a so-called internist throughout my lifetime, doing no surgery whatsoever—always engaged in the practice of medicine, and have been known as a family physician until 1917 when I entered consultation practice.

Q. Did you spend any time in continental Europe in any research work or in any particular work?

A. Well, I spent 3 years for the most part in Germany, in the university towns or cities of Germany,
1497 Bonn, Heidelberg, Zurtsberg, Munich. I spent about 3 months in London, and about 3 months in Paris.

Q. What about Straussberg?

A. I was at the University of Straussberg.

Testimony of Dr. Leon L. Solomon

Q. What about Vienna?

A. I was in Vienna for six months.

Q. What did you do in those places? What was your mission over there?

A. I did post-graduate work in the university cities and hospitals.

Q. Did you specialize in any field of medicine or mental diseases while you were there?

A. I prepared myself to be an internist, and did laboratory work and pathology and refgenology—that is x-ray work.

Q. Did you become associated or study in Europe under any celebrated doctors or authors?

A. I was a pupil of Prof. Wasserman, and I was a pupil of Prof. Erlich. In my time in Germany there were the medical centers, so to speak, of the world for the most part of that time, in Germany, in Vienna and in Prague.

Q. Well were you ever taught on the continent of Europe the Mendelian theory

A. Prof. Mendel, one of the early of the so-
1498 called psychiatrists which in those days was known as nervous and mental diseases was a profound pupil of the monk, the Catholic man, Mendel, who himself was not a physician, but who was a botanist and a biologist. The Mendelian Theory of Heredity, Prof. Mendel, the doctor, followed after Prof. Mendel, the Moravian monk.

Q. How long did you spend in Europe in the pursuance of your education?

A. I was 3 years in Europe.

Q. After you returned from Europe, what profession did you engage in?

A. I came back to Louisville—I came in as a teacher at the old Kentucky School of Medicine. Thereafter organized with a group of men of my age the Kentucky University Medical Department which absorbed the University of Louisville and thereafter led to the absorption of the other three regular medical schools of Louisville.

Q. Did you practice your profession in all of those years that you have mentioned?

A. I have been continuously engaged in the practice

Testimony of Dr. Leon L. Solomon

of medicine here in Louisville throughout all of my years.

Q. How old are you?

A. I was 72 in September last.

1499 Q. Did you ever establish, or have any part in the establishment, of any clinic in Louisville?

A. In 1917 I retired from the visiting practice and organized and established a clinic which I carried on for 13 years.

Q. During 1917 or about that time did you have any part in the establishment in Kentucky of any venereal disease stations?

A. During the World War I was Director of the Bureau of venereal diseases under the State Board of Health of Kentucky in affiliation with the United States Public Health Service.

Q. Now have you any other training or qualifications that you desire or may add to what you have already told us about?

A. They say self praise is half scandal. I taught medicine for 25 years, starting at the bottom as a bottle washer at the University of Louisville and became a professor of theory and practice of medicine at the University of Louisville when Dr. Marvin died, and continued to teach the chair which he had occupied from 1913 to 1917, when I resigned.

Q. Now, what nationality are you?

A. Well I was born in Kentucky, and I must be
1500 an American. Do you mean what is my religion?

Q. Yes?

A. The Jew does not have any nationality. I am a Hebrew. My mother and father were Jews, born and reared in southern Germany.

Q. Are you married, Doctor?

A. I am married.

Q. Are you married to a Jewess or to a person of another nationality or what?

A. My first wife was a Jewish woman. My present wife is a Presbyterian.

Q. Do you have any children?

A. We have, not an adopted but a foster child. A child

Testimony of Dr. Leon L. Solomon

that was given to us 8½ years ago.

Q. Is that a Jewish child or an americanized child?

A. That child had a Protestant mother and a Catholic father who, when he gave her to me, desired that she be raised as a Catholic child, and I have raised it as a Catholic.

Q. You are Abie's Irish Rose mixed up into one, aren't you?

A. What?

Q. You are Abie's Irish Rose—

Mr. Brown (Interrupting): Well I don't know
1501 that I can stipulate as to that.

Q. Meaning, of course, the play by that name where a child was of one religion and the other of another.

Mr. Hogan: All right, Dr. Solomon.

DR. THOMAS J. CRICE was examined and testified as follows:

Direct Examination continued by Mr. Hogan.

Q. Dr. Crice, are you married?

A. Yes, sir.

Q. What is your religion, if you have any?

A. I am a Presbyterian.

Mr. Brown: Your Honor, I do not think it is important in this case to know whether they are married or are of any religious denomination. I don't know that that adds to or detracts from their profession.

The Court: I think we are more concerned with their professional training and experience which has been rather fully gone into.

DR. LEON L. SOLOMON was then examined and testified as follows:

Direct Examination continued by Mr. Hogan.

1502 Q. Dr. Solomon, have you, in your years of medical experience, had occasion to diagnose and

Testimony of Dr. Leon L. Solomon

treat mental cases?

A. I think I can say, without braggadocio, that I have seen a vast number of mental diseases, both as a student before I began the practice of medicine and since I have been a practitioner.

Mr. Hogan: Now, if Your Honor please, I think that bears on their qualifications.

Now I would like to ask Dr. Crice some questions. Should Dr. Solomon retire?

The Court: I think you had better take it separately. Let Dr. Solomon retire to the halls while you interrogate Dr. Crice.

(Whereupon Dr. Solomon left the court room.)

DR. THOMAS J. CRICE was examined by counsel for defendant, Mr. Hogan, and testified as follows:

Direct Examination continued by Mr. Hogan.

Q. Dr. Crice, what is your idea as a medical expert, of the term "hallucination"?

A. We have auditory hallucinations, hearing voices. We have visual hallucinations, seeing objects
1503 that do not exist.

Q. What is a delusion?

A. A delusion is a false idea that cannot be corrected by reason?

Q. What was that last?

A. That cannot be corrected by reason.

Q. What is psychosis?

A. Psychosis is insanity.

Q. Is that commonly known as disease of the mind?

A. Yes it is.

Q. What is a psychopath?

A. A psychopath is an individual that is insane. We have the psychoneurosis, we have the psychophrenia, and we have the neurosenia and the major hysteria. We have a lower classification of lower mentality that is also psychopath, epileptic, imbecility, morons. They are all under

Testimony of Dr. Thomas J. Crice

a classification of psychosis or mental deficiency.

Q. What is the paranoid type of dementia praecox?

A. Paranoia, the paranoid type of dementia praecox, is a continuation of this disease of insanity that we call dementia praecox. It is a continuation into a state of grandeur with systematized delusions, because it is a continuation, in many cases, of a disease of the body, 1504 of a following out or continuation of some other mental disease.

Q. What do you mean by a "systematized delusion"?

A. A systematized delusion is particularly seen in paranoia. Paranoid dementia praecox. They build up the paranoid ideas with systematized delusions in their minds. Some of it is of a religious character, some of it is of a litigation character, some of it is of a jealous character. It is a webbing or winding around in their minds of systematized delusions, usually of persecution.

Q. What are usually the first symptoms of a dementia praecox personality?

A. A dementia praecox personality, it develops in young individuals from the age of 15 to 30. Usually they have been unstable prior to that. They have a disorganized conduct. Their mentality may be bright, it may be brilliant. They may be splendid students. It is owing to the character or kind of dementia praecox that they are suffering with.

Q. Well, when do you run into these brilliant types of dementia praecox or, rather, what are some of their symptoms—these brilliant types?

A. The precocious or brilliant type of dementia praecox, paranoid form, have had capacities to learn. Some of them go through college and they go up to a 1505 certain point in life, and when competition or failures or great disappointments come, they can't stand that. Therefore, where a business deal, or a business venture, or when this, that, or the other goes wrong, they want to incorporate these systematized delusions of persecution and unfaithfulness toward everybody they come in contact with.

Q. Do they have a tendency to blame their plight upon

Testimony of Dr. Thomas J. Crice

others?

A. That is characteristic.

Q. Is persecutory state the first stage, or is that a middle or intermediary stage of dementia praecox?

A. The systematized delusions of persecution is really the pathognomic or there is certain evidence of the paranoid type.

Q. Would you say that a person who becomes morose is in the stages of dementia praecox?

A. In many cases of dementia praecox there is a moroseness at times, there is a seclusiveness and there is a shyness. There is an inclination to want to retire from reality or to get away from society in general or even from the world, and hide.

Q. Are those symptoms the first manifestations of dementia praecox?

A. That is often the early evidence of dementia praecox.

1506 Q. Now, does a dementia person stay in that form or does he travel on to some other form such as the persecutory form or the paranoid form?

A. He may, of course, die from some intercurrent disease, or he may stay in a simple form. He may stay in what we call a catatonic form. He may stay in the hebephrenic form. That is the active form of a very vicious, extreme type individual, with extreme activities with mental deterioration. He may go out and develop a typical dementia praecox with paranoid trend.

Q. Now, I want to find out now whether or not these well educated and brilliant-appearing types or personalities may or may not yet be insane?

A. I think all forms of dementia praecox is insane.

Q. Well, does it follow, from your version, then, that these precocious personalities on the surface appear sometimes to be the unusual type and yet be a dementia praecox?

A. That is the paranoid form. That is the form that we expect to go into the paranoid trend of persecution.

Q. Is that type person any the less insane because he appears to be brilliant?

Testimony of Dr. Thomas J. Crice

A. Sometimes he is more insane, and more dangerous.

Q. In other words, to be insane, you do not have
 1507 to be a frothing-at-the-mouth person or an imbecile or an idiot?

A. Not at all.

Q. Now tell us some more about the paranoid tendencies in the dementia praecox type?

A. Dementia praecox, with paranoid trend, is an individual, he may have associated insane tendencies. He may be over-sexed. He may be a sex pervert. Or he may be one that wants to kill all the time. Many of them do. He may be one that has ideas of grandeur about what he can produce. Some of them believe that they can make mountains out of mole hills, that they can make gold out of corn husk, and that they can make diamonds out of wood. Those are some of the insane bizarre, balloon ideas.

Q. Now would those persons that you have described, would they be insane?

A. Yes, sir. Some further believe that in their grandeur ideas that they are sent on earth by God to preach to everybody, to convert everybody to their petty form of religion. Some believe that they should be anti-social, that they should go back to the farm, or that they should be anti-government, or that they should be anti-this or anti-that or anti-the other, and they like to project their ideas in this paranoid insane frame of mind on to somebody else, and heap all of their troubles upon some-
 1508 body else's misdeeds.

Q. Are they still persons of insane qualities?

A. Very much so.

Q. Do they ever take unto themselves the role of re-incarnated personages?

A. In their grandeur, oh yes, they get into the idea that they are some great personage, that they have been cheated out of their knighthood or their royal position in the world by some deception from a supposed enemy. They pride in having great ideas of important persons. They will trace their blood, their kinsmen back for hundreds of years when they have no history whatever—it is all just a delusion.

Testimony of Dr. Thomas J. Crice

Q. It is an idea based on false belief. Is that right?

A. Yes. They never had any ancestry back any farther than their own father and mother so far as they know but they will trace it back 200 years, without any record at all.

Q. Do they have an abiding faith or belief in that ancestry?

A. Yes; that is one of their petty, fixed, insane bizzare delusions?

Q. Is that to them a real belief?

1509 A. Yes, they get a great deal of enjoyment out of it. They live in a heavenly atmosphere at times, believing in those grandeur ideas.

Q. Are those types of persons insane?

A. Yes, sir.

Q. Now do you know the mind to be divided into the subjective and objective mind?

A. We believe the mind—

Mr. Brown (Interrupting): When you say "we" do—what do you mean by that?

Witness: The medical profession.

A. We believe that they have a subjective mind and an objective mind. Our subjective mind is the seat of our deep thinking, our conclusions, our originated ideas. That is passed on to our objection mind for direction. The objective mind is in an unconscious state or not in a receptive state. There is nothing to guide this mind, this subjective mind. The objective mechanism isn't there to carry out or perform its ideas.

Q. What about the willpower of these dementia praecox persons? Do they have control over their willpower?

A. It is well known that they have a poverty of ideas, and a willpower that is not stable.

Q. Well do they have a power to prevent their
1510 carrying into effect some act that they may know to be wrong?

A. Yes, that is the idea of describing a subjective and an objective mind. The subjective mind creates the idea and the objective mind carries out the intention, but if you have a poverty of ideas, if you have an unconsciousness of the objective mind, the willpower is lost. He doesn't recog-

Testimony of Dr. Thomas J. Crice

nize what he does, when he does it or how he does it.

Q. In other words, down to plain earth, he gets an idea and does it and can't control himself. Is that what you mean?

A. That is the substance of it, yes.

Q. Are those persons who get those ideas and carry them out, with no control over them, insane?

A. Yes, sir.

Q. May they sometimes know right from wrong?

A. Yes, at lucid intervals where they have cleared up with some treatment or some rest they may have intervals that by persuasion or by advice they realize that in the height of their wild theories of grandeur desires, they don't know right from wrong.

Q. Well are there stages when they know right from wrong and yet can't control their actions?

A. Yes.

1511 Q. In those stages where they know right from wrong, would you say that those types are still insane persons?

A. Yes, their willpower, their judgment, is destroyed. They can't make decisions of what is right and what is wrong. The drive of the subjective mind seems to have full sway.

Q. The subjective mind then is the idea-forming mind?

A. It is the mind of origination of ideas. Our thinking capacity.

Q. Then in order to be a sane person, you would have to have a subjective mind where ideas formulate, and an objective mind capable of putting the brakes on those ideas. Is that right?

A. Full coordination between those two minds.

Q. If there is not full coordination between the subjective and the objective mind, you then are insane. Is that what you mean?

A. Yes, sir.

Q. Do you know this defendant, Thomas H. Robinson Jr.?

A. Yes, sir.

Q. Have you gone into his history and background?

Testimony of Dr. Thomas J. Crice

A. I examined the defendant in the County Jail
 1512 on November 8th and November 9th and November
 15th.

Mr. Brown: What year?

Witness: This year.

Q. Did you obtain a history from him on that occasion, Doctor?

A. Yes, sir.

Q. What was that history?

The Court: I believe if we are going to hold to our—you are starting in on a new line of questioning which might lead us quite well into the night before we get through. If it is agreeable with you, we will suspend at this time.

Mr. Hogan: That's all right.

The Court: Members of the jury, I want to thank you for being here tonight with us instead of taking your ease at the hotel as you have done. We are all trying to close up this case, if we can, within a reasonable time.

Remember my admonition to you not to discuss the matter among yourselves, or with anyone, or permit anyone to discuss it in your presence; and the added admonition that I gave you this afternoon, please do not eat too heavily either tonight or in the morning.

We will adjourn until 9:30 in the morning.

1513 Met pursuant to adjournment, at 9:30 a.m.,

Thursday, December 9th, 1942, with proceedings as follows:

Direct Examination of Dr. Crice by Mr. Hogan (continued)

Q. Do you know the defendant, Dr. Crice?

A. Only from the examinations I made in the County Jail on November 8th, 9th and 15th of this year.

Q. State whether or not the use of alcohol or intoxicating drinks has an effect upon a dementia praecox person?

A. The excessive use of alcohol upon a normal mind will produce excitement, small amounts; in large amounts it will produce a drowsiness and also a tremor, a delirium tremor. In a defective mind it is almost like pouring gaso-

Testimony of Dr. Thomas J. Crice

line on fire. A little alcohol will disturb and excite a mental patient quicker than anything I know of, and more alcohol will further have a tendency to deteriorate what mental capacity he might have left.

Q. What effect does the use of alcohol in a person who has contracted syphilis have?

A. The use of alcohol upon a syphilitic, particularly the nervous system and mind, is well known. Alcohol seems to have a great influence in aggravating and increasing the severity of syphilis.

Q. Now, I believe in syphilis there are some
1514 tests that are made to determine the type of syphilis in the system, is that correct?

A. Yes, sir.

Q. Are those tests always uniform and always determinative of the presence or absence of the condition?

A. No, sir, particularly in the later stages of syphilis, they are not dependable. Now, if you please, I will describe the tests for syphilis, we call it the Wasserman tests, that is, the examination of the blood and also the spinal Wasserman and Kahn, it is called the spinal fluid. These tests determine whether or not the germ of syphilis is in the human blood or in the spinal fluid. Now, when the patient is under intensive treatment, these tests are liable to be negative because the treatment will so eradicate the germs of syphilis that the test is not positive. That is termed in scientific words as Wasserman test, that is, the reaction is not positive under intensive treatment. Sometimes the reaction is not positive without treatment, it isn't a hundred per cent. In older cases of syphilis where you expect organic diseases of the brain, like paresis or locomotor ataxia, the tests for syphilis is rarely positive, rarely, because it is believed the germs of syphilis have become intercellular or hidden away, so to speak, until the individual reaches the mid period of life and his de-
1515 fense process is declining, and then the activity of the organism presents itself and we have this organic disease of the brain that we call paresis or syphilis of the brain, or general paralysis.

Q. Now Dr. Crice, assuming that this defendant,

Testimony of Dr. Thomas J. Crice

Thomas Robinson, Jr., had been a normal boy up until his fifteenth or sixteenth year, and that he then had malaria, pneumonia, tuberculosis, pleurisy, and he was out of school for about a year, and that following that event of forced marriage in his life at the age of some nineteen or twenty which shocked him and changed his personality, and that following that he changed from a sociable type of boy that got along well with his fellow associates, both men and women, and with his parents, and that he would go into rages, have a glassy and crazy stare in his eyes at times when he would get mad, and assuming that he had worked for Mr. C. C. Stoll here in Louisville, Kentucky, or the Stoll Oil Company, and had severed his connection with that company and had later gone out and made applications for various jobs and had given, in most of those applications, Mr. C. C. Stoll as a reference, and that later this defendant whom I have named, Thomas H. Robinson, Jr., had an idea that Mr. C. C. Stoll was blocking his efforts to get employment, although Mr. C. C. Stoll had on the other hand written a good letter of recommendation to this young man—would you say that was an insane delusion in the mind of this boy?

1516 A. I will have to answer that rather piece-meal.

Q. All right, sir.

A. The diseases that you have enumerated, any one of them or all of them, in the early youth could produce what is known as toxic psychosis or insanity from poison being eliminated from the body into the main brain. That is known as a toxic psychosis. That would have been sufficient to have produced a toxic psychosis at that time.

Q. What do you mean by psychosis? Now these people over here, and I don't know that I know—let's find out what psychosis is.

A. I tried to explain that a time or two. Psychosis is the technical name for any character of insanity, psychosis, a psycho mind.

Q. Then we have a toxic insanity, as you have said.

A. That is usually a manifestation of a disturbed mentality after long sieges of the various diseases that you have just enumerated. Now, with a dementia praecox

Testimony of Dr. Thomas J. Crice

development, at that particular period, these diseases certainly would intensify this character of insanity coming on in young individuals. Now this character of insanity is—we thing it is psychogenetic; psycho, insane; genetic, to generate, *genésis*. Is that plain enough?

Q. I think so. Now, carry on to the other part
 1517 of my question, whether or not that was an insane delusion he had.

A. Therefore, I am trying to get to the background of your dementia praecox. The dementia praecox developed at an early age because there was something in his mental mechanism that discontinued to develop. He had a perverted idea. He had a change of trend of thought. He began to fit into the classification of dementia praecox—seclusion, excitement, tantrums or irritability, unable to proceed and get along with people, unable to proceed with his normal studies. The acceptance of the habit of alcohol was an abnormal situation. No one, I don't believe, becomes an alcoholic, to say nothing of alcoholic insanity, unless there was something wrong with him before.

Q. Now, you are treading on a lot of people's toes, when you say—

A. Now let me go over that again, please. I am speaking of alcoholism as a constitutional disease producing a psychosis, alcohol psychosis, in many instances. I am talking about excessive alcoholism. I don't mean a morning toddy or a night-cap at all, but anyone that engages in the excessive use of alcohol, particularly the young, may be laying the ground for some mental development—dementia praecox or whatnot—makes them more sus-
 1518 ceptible. In the older individual, or course, we know alcohol affects the liver, affects the heart, affects the arterial system, in excess. Is that plain?

Q. Does that excess, or, rather, more than mild use of alcoholics, vary with the individual?

A. Oh, yes. There are some people that can drink, a young individual, a great deal of alcohol and they will have mild intoxication or severe intoxication, and after a few hours or a few days they eliminate the poison, and with a lot of food, with elimination of the bowels, they

Testimony of Dr. Thomas J. Crice

escape without seemingly much damage. Other individuals, with a modest amount of alcohol, are more susceptible, nervous individuals, will become excited, even have delirium tremens with a small amount of alcohol, may be days or weeks in getting back to their normal state of mind.

Q. Now tell us about Mr. C. C. Stoll's—rather, this boy's ideas of Mr. C. C. Stoll's blocking his path.

A. Those trends of persecution, big ideas, and the rich dominating the poor, and the idea that the wealthy is an enemy to the working man, was purely a paraneid type or trend of persecution in this character of mental disease. It was build-up, it was an extension, it was going upstairs, you might say, it was pyramiding.

Q. Do you believe that he had the willpower to dispel that trend or that idea, or that delusion, as you
1519 care to call it.

A. No, I don't believe he realized the seriousness of it, he didn't realize what it meant, what it would lead to. I don't believe that he had that much judgment, that much of mental capacity.

Q. Well, it has been said that he was a personable type of man, very pleasing personality, made good grades.

A. That was prior to this episode, if I understand it. He made good grades in the common schools, according to the history, he made—

Mr. Brown: Wait now, let me object to this. We haven't heard any facts upon which Dr. Crice's testimony is based.

The Court: No.

Q. Eliminate that part of it, the grades he had. Now, with reference to his ideas of persecution of him by Mr. Stoll, in your opinion do you believe that he had the will to control that idea or delusion?

A. My personal opinion is that Mr. Stoll did nothing to him to create this idea.

Q. What is your medical opinion of it?

Mr. Brown: Do you know anything about it at all?

The Court: You don't know anything about it, do you, Doctor?

The Witness: My medical opinion, Judge, is that it

Testimony of Dr. Thomas J. Crice

1520 was an insane delusion.

Mr. Brown: I suggest, Your Honor, that we are entitled to have the facts before the Doctor begins to expound.

The Court: I believe the Doctor will have to predicate his answer on some hypothetical question, Mr. Hogan, that has not yet been put into the record, if you are ready for that question.

Mr. Hogan: I wanted to propound that general question to both of them.

The Court: He has got to have something to go on. He just can't testify to the jury about what he thinks without having some facts before the jury.

Mr. Hogan: I will give him that a little bit later on, together with Dr. Solomon.

Q. Speaking generally and without reference to any particular persecution or delusion, do these paranoid types of dementia praecox have the willpower to carry into effect their ideas?

The Court: You are talking about people in general?

Mr. Hogan: In general.

The Court: No particular person.

Mr. Hogan: No particular person.

A. No, they don't.

1521 Q. Do they sometimes know right from wrong?

A. No. As long as they are under the domination of those delusions, paranoid type, they don't know right from wrong, they can't know right from wrong when they are obsessed with that character of mental delusions.

Q. Does that destroy their ability to distinguish between right and wrong?

A. Yes, sir.

Q. Is that a distorted idea?

A. Yes, sir.

Q. Doctor, even if they did know right from wrong, and even if you went so far to say that, would they still have the willpower to control their actions?

A. No, not under the circumstances which I have just described. The reason is because they are possessed with this disease and this insane idea. There is no reason in

Proceedings

their minds under those particular delusions.

Mr. Hogan: Now I believe I will stop with him at this point until I have had Dr. Solomon. Then I will bring him back for this hypothetical question.

The Court: I believe that's a good procedure, and you can present the hypothetical question to both of the doctors at the same time. All right, Dr. Crice, if you will, step to the hall for a short while.

Mr. Hogan: Did you want to cross-examine him?

1522 Mr. Brown: No, I will wait until you get through.

Mr. Hogan: Don't go away, Doctor.

The Court: You will have to retire from the court room, Doctor.

Mr. Hogan: Dr. Solomon isn't here. I telephoned his office and they said they thought he was on the way here.

The Court: Have you any other witnesses you can take at this time?

Mr. Hogan: I have two other witnesses on the way. They should be here any moment now. If we can suspend for five minutes, I am sure that Dr. Solomon or either of these other witnesses will be here.

The Court: Gentlemen, we want to get through with this case, and I think counsel should impress upon their witnesses that it is very important to be here. Everybody else is here waiting for them. It is rather unreasonable for a witness just to be late when he knows he is supposed to be here to testify. However, if they don't come, there is not much we can do except wait for them.

I expect, gentlemen of the jury, we will have to take a short recess. I am sorry we can't go ahead. Do not discuss the matter, however, among yourselves in any way or talk about it to any person.

Give a short recess, Mr. Marshal.

Out of the presence of the jury.

At a conference in the Judge's chambers, out of the presence of the jury, at which the District Attorney and Mr. Hogan were present, the two witnesses, Mr. and Mrs. Joseph M. Hayse, were called in, it having been indicated to the Court by defense counsel that he proposed to call

Proceedings

them as witnesses in behalf of the defendant, and such matter presenting some questions that the Court thought advisable to consider out of the presence of the jury, the following conference was held:

The Court: Now, Mr. Hogan, we have had one conference heretofore about Mr. Hayse's testimony in which the Court rules that the matters that you indicated you were going to ask him about were privileged, and I would like to know just what is the general nature of the questions you propose to ask him now, so we won't get into the same difficulty as we did before.

Mr. Hogan: The question of privilege came up when Mr. Fowler Woollet, in chambers, testified that he had consulted Mr. Hayse with reference to making a claim against the Stolls, and when the Court asked him if he desired to have that treated as confidential and privileged communication, he answered that he did so, and on that the Court refused to allow the testimony of witness Woollet to be contradicted on the ground that any conversation he had with Mr. Hayse was privileged conversation or communication.

1524 With reference to Ann Woollet, the situation is entirely different in that witness Ann Woollet denied ever consulting Joseph Hayse, or any attorney, or anybody, about making any claim, so if she never consulted any attorney, and that's her testimony, about making a claim, she could not claim a privilege and on that basis I attempt to show that she made certain statements.

The Court: You are going to show first, by these two witnesses, that Ann Woollet did consult Mr. Hayse.

Mr. Hogan: That they did go to his office and that she did make certain statements.

Mr. Brown: That's the same old question.

The Court: I believe you could probably ask the question whether or not she went to see Mr. Hayse and have Mr. Hayse answer it. I don't know that you can go any further than that.

Mr. Brown: Also, let's consider this one further point. Mr. Hayse testified on yesterday that Mrs. Hayse was not present in the office, that Mrs. Hayse was about to have a

Proceedings

child, and that Mrs. Ann Woolet had come to his home on Confederate Place when these statements were taken down. Now I submit the first fact, that it is privileged communication, and the second fact, there is no basis in the world for the contradiction when on Mr. Hayse's own testimony it happened at Confederate Place, and on Mr.

1525 Hogan's question and the judge's finding it happened at the home of Mr. Hayse on Confederate Place, where his wife was, and that she was pregnant at that time and did have a child early in January of the following year.

Mr. Hogan: The statements were made in Mr. Hayse's office. Let's consult the record, on Page 643, which is the cross-examination of witness Ann Woolet, she was asked

"I will ask you if it isn't true that she (meaning Mrs. Alice Stoll) put her arms around you and kissed you."

and her answer was:

"Oh, for goodness sakes, no."

The next question on that page that is involved is:

"Did you move any furniture or arrange the furniture in the Stoll home upon your return back from the Speed home?"

Her answer was:

"I don't remember. I went to bed. I don't remember doing anything when I got back."

On page 644, she was asked the question:

"Did you ever tell anybody (that means not only Joseph Hayse but his wife or anybody) you found a large sum of money behind a pillow in a chair after your return to the Stoll home and after the return of Mrs. Alice Stoll to her home."

Proceedings

Her answer to that was:

"I don't remember."

1526 The next question on page 644 propounded to her was:

"Do I understand you to say that you do not remember either finding the money, a large sum of money, and do I also understand you to say you do not remember telling anybody that you found any money?"

Her answer to that was:

"I do not remember."

Now, on page 652, she was asked this question:

"Did you ever make any claim, or did your husband ever make any claim, against Berry V. Stoll or Mrs. Alice Stoll?"

To which she answered:

"No."

Now, she cannot claim it privileged when she denies ever making a claim—

The Court: I don't agree with you there. You are trying to prove she did make a claim. Certainly you can't prove that and say she can't ask privilege too.

Mr. Hogan: Well, I can show that she has contradicted herself.

The Court: Certainly, even if she has, that doesn't mean she is not entitled to claim privilege.

Mr. Hogan: She was asked:

"Did you ever consult an attorney about presenting a claim against them, or did your husband?"

Her answer was:

"I did not."

Proceedings

1527 Mr. Brown: Which is exactly true.
Mr. Hogan: Page 654:

"I will ask you if it isn't true that you went to the office of Mr. Joseph Hayse, an attorney in this city, together with your husband, Fowler Woollet, and didn't you consult him about presenting a claim against Mr. Berry Stoll and Mrs. Alice Stoll too?"

She answered:

"I do not remember."

The Court: All right. That's at the office.

Mr. Hogan: Yes. Next question:

"Well, do you say that you did not do that?"

Answer: "I do not remember it. I feel that I would remember it."

The next question:

"Did your husband do that?"

Answer:

"I don't know."

Question:

"Did you consult any other attorney in Louisville or elsewhere with reference to making a claim against either one of those Stolls that I have just indicated to you?"

To which she answered:

"Not that I remember."

Question:

"Well, you would remember it if you had done that, wouldn't you?"

Proceedings

Her answer on Page 665 is:

"I think so."

1528 "Q. And you don't remember that?"

To which she answered: "No."

Now, on page 664, she was asked,

"Did you ever consult any other attorney than Mr. Hayse about this matter?"

Her answer was:

"I have never consulted any."

Now, Mr. Joe Hayse says—

Mr. Brown: Before we get into that, let's get the other factual situation. He introduced Fowler Woollet as his witness. Fowler Woollet said he did the consulting of Mr. Hayse, that Mr. Hayse's wife was not present at the office, that she was expecting a baby, and Mr. Hayse told him to bring his wife out to their home on Confederate Place, which he did. They went out to Confederate Place and in the presence of Mrs. Hayse certain statements were made. Now, so we will keep it straight in mind—

Mr. Hogan: I am not trying to contradict Ann Woollet by Fowler Woollet.

Mr. Brown: No. You introduced Fowler Woollet to show that Ann Woollet was not in the office, which was true, and according to Mr. Hayse's statement, the statements were made at Confederate Place.

Mr. Hogan: I am introducing Joe Hayse to
1529 contradict Ann Woollet. If I understand the contradictory rule, you can ask the witness if she didn't make certain statements upon a certain thing, he or she, and upon that witness answering no, you can bring or show that she did either by her husband or anybody that heard those statements.

Mr. Brown: Page 656, you asked:

"Now Mrs. Woollet, I will ask you if you on or about September 9th, you did not make these state-

Proceedings

ments?

"The Court: Where, Mr. Hogan?

"Mr. Hogan: To Mr. Joseph Hayse, in his office, at which time his wife, Mrs. Nellie Stoess Hayse, was present."

Now you find it again, a question about Mr. Hayse's office, and I submit that no foundation has been laid to impeach Mrs. Woollet's testimony even on the ground that it is not privileged, and which it is, and which they claim.

The Court: Let's see if we can first agree on the facts.

Mr. Hogan: I have got it marked here—this is by the Court to Joseph Hayse, page 1305:

"Did Mr. Fowler Woollet come to see you, either in your office or your home, sometime in 1935?"

Answer:

"Mr. Fowler Woollet and his wife—"

The Court interrupted:

"Ann Woollet?"

1530 Joe Hayse continues:

"Yes, Ann Hobbs Woollet came to my office—they either came in or were brought in by someone."

Now there he is in his office.

Mr. Brown: That's right. We are talking about the statements. Get to the statements.

Mr. Hogan: All right, the next question:

"Taking it up from that point (still questioned by the Court), please detail the circumstances under which they came to you, what they inquired about and what was their purpose."

Answer:

"I had been consulted in regard to the Robinson case, and my recollection is that W. K. Powell knew

Proceedings

that and I had discussed it with him. Powell brought these people in (he means to his office because you just asked him about his office) and he told me who they were and what he knew in a general way; and I took their statement (meaning Ann Hobbs Woollet, and Fowler Woollet) and they thought that they had a claim against Berry Stoll at the same time I took a very thorough statement of the Robinson case and all of its angles and views."

Now there is more to the answer.

Mr. Brown: Well, I think it varies very little in the—

Mr. Hogan: I will read it:

1531 "There was very little in the statement (there she did make a statement, Ann Hobbs Woollet) and there was very little in the statement of Fowler Woollet that particularly pertains, as I saw it, to their own claim against the Stolls. I discussed that with them thoroughly and it was a kind of ease—well, I just didn't think there was sufficient merit in it to justify my going into it or trying to handle it."

Question, still by the Court:

"That's the claim—"

Mr. Brown: No, that is not by the Court. That's by you. It would indicate by the Court, if it was by the Court.

Mr. Hogan: No, Judge Miller asked him that, because you asked him and then I asked him. This is by Judge Miller.

Mr. Brown: All right, keep on going.

Mr. Hogan: Next question then, by Judge Miller:

"That's the claim against the Stoll people?"

His answer:

"The claim against the Stolls, and I so told them that I was not interested in it and I didn't make any contract of any kind with them. They didn't pay me any fee. The first visit was to the office and I made ar-

Proceedings

rangements with them to come out to my house, and Mrs. Hayse took the statement of Ann Hobbs Woollet in her own words and they came back evidently the next night in order to give her time to write it up, and she signed her statement at that time. There were two or three corrections made in it before she signed it, going over it carefully, and then we took the statement of Mr. Fowler Woollet and he gave that statement."

But in the previous answer Mr. Hayse said that he took their statement in his office.

1532 The Court: It looks like he corrected himself, doesn't it?

Mr. Brown: It sure does, and the only signed statement or statement that was written down was out at Confederate Place.

The Court: Have you got their statements?

Mr. Hogan: He took their statements.

The Court: I know, that's on Confederate Place, but later on he said he took it at the home. Did you have two statements or one statement?

Mr. Hogan: One statement. I mean, they told him in his office, words that were later reduced to writing. A statement may be written or it may be oral. I could make a statement here, but I do not reduce it to writing.

The Court: I think the statement you had was the written statement, which was taken in question and answer form, stenographic form.

Mr. Brown: That's the statement that Mr. and Mrs. Hayse were examining out there in the other office.

Mr. Hogan: I asked the witness, Mrs. Woollet, if she didn't make a statement. I didn't show her this statement.

Mr. Brown: You asked her the question following that statement.

Mr. Hogan: I asked her the question.

1533 Mr. Brown: You followed down that written statement and asked her the questions.

Mr. Hogan: The fact that I had a written statement doesn't cut any ice in this case because the very pur-

Proceedings

pose of contradiction is to show that at some previous time the witness had made contradictory statements.

"Now with further reference there—well, at the time when you took this statement, the rather full statement that you speak of, in your home, did you know and understand they were advising with you with reference to a possible civil claim which they had against either Mr.—"

The Court: (Interrupting) That refers to the statement by the Court—I am talking there?

Mr. Hogan: You are talking there.

The Court: Shows the impression I got.

Mr. Brown: There is no question about it.

Mr. Hogan: (Continuing)

"The original statement had been taken down at the office,"

Mr. Brown: Which it had not.

Mr. Hogan: (Continuing)

"but was given to my wife at Confederate Place."

He says, "The original statement had been taken down at the office."

The Court: If you have two statements here, go ahead and produce them. Maybe I am wrong.

Mr. Hogan: I don't have to produce the statement. I can produce the witness who wrote that statement.

Mr. Brown: You are referring to a written
1534 statement.

Mr. Hogan: There is not a single word in Ann Woollet's testimony about any written statement.

Mr. Brown: I beg your pardon.

The Court: The questions you asked her were read from a written statement, signed by her, wasn't it?

Mr. Hogan: Yes, but I asked her if she hadn't made previous statements.

The Court: You confined it to the office.

Mr. Hogan: At the office I am prepared to show by

Proceedings

this witness that Ann Hobbs Woollet made those statements to him in his office.

The Court: Are we agreed on the fact, or can we agree on the fact, that Mrs. Woollet would claim privilege, or do you want her brought in to state that to the court?

Mr. Hogan: I don't see how she can claim privilege.

Mr. Brown: She can claim privilege.

The Court: She can come in and claim it whether you see it or not. I know Mr. Woollet claimed privilege, and he seemed to be acting for both of them at all times. Of course, if you are not willing to agree that she will—

Mr. Hogan: If the Government wants to make a liar out of their own witness—

1535 Mr. Brown: The Government is not making a liar out of their witness.

Mr. Hogan: She will have to admit she was in an office and consulted an attorney.

Mr. Brown: You put her husband on.

Mr. Hogan: You can throw him out of the window. It is what she says.

Mr. Brown: It is significant that the very statement you are talking about was taken right out at Confederate Place. You will have to show that she made a different statement at a different time. Apparently Mr. Hayse thought so until his recollection has been refreshed yesterday or day before, about the statements being made at Confederate Place.

The Court: I think the real question is whether or not it was a privilege communication. From what we had the other day, my views are very definite that it was, and from the testimony of both Mrs. Hayse and Mr. Woollet. So the only point that I think we have in mind is whether or not she wants to claim her privilege. If she does—

Mr. Brown: You agree she will claim it, or do you want me to go out and get her?

Mr. Hogan: I want her to come in here and face the music and claim it.

The Court: Is she here?

Mr. Brown: She ought to be in the witness room.

1536 The Court: Joe, was more than one written

Proceedings

statement taken, question and answer form?

Mr. Hayse: Yes, there were two written statements taken, one of hers and one of his.

The Court: Yes, that's one only, one written statement of each of them, in question and answer form.

Mr. Hayse: This was not in question and answer form. When they came to the office I went over this very thoroughly, and, naturally realizing the situation and wanting to protect myself, I wanted to get a statement recited in their own words, and the statement they actually made here—

(The Marshal announced that Mrs. Woollet was not in the witness room.)

Mr. Hayse (Continuing): —was not, my recollection is, as full and complete as they told me in the office. This is in a narrative form, the statement they made to me in the office.

The Court: Was that reduced to writing?

Mr. Hayse: No, that was not reduced to writing.

The Court: That's what I am trying to get at. There was no more than one written statement.

Mr. Hayse: My recollection is, there was not.

The Court: Her written statement that was signed by her was written at your home and taken by Mrs. Hayse.

1537 Mr. Hayse: The written statement—

The Court: I am asking you if there was only one written statement signed by her.

Mr. Hayse: Only one written statement.

The Court: And that written statement was taken at your home?

Mr. Hayse: That's right.

The Court: And taken by Mrs. Hayse in shorthand and typed out by her at your home?

Mr. Hayse: That's right.

The Court: And whatever statement she made to you in the office was an oral statement?

Mr. Hayse: That's right.

Mr. Brown: I didn't think this was coming up. Last night I told Mrs. Woollet she could be excused. I will have

Testimony of Joseph M. Hayse

to call her and have her come.

The Court: I will let you ask Mr. and Mrs. Hayse, if you want to, whether or not she came to the office or whether or not she came to the home.

Mr. Hogan: You want to do that now?

The Court: I think you better do that before the jury. You want the evidence before the jury.

Mr. Hogan: I will ask if she made a statement—consulted him about a claim or made a statement.

The Court: But the contents of that statement
1538 I am going to hold as privileged.

Court reconvened after the recess and the following proceedings were had:

JOSEPH M. HAYSE, called as a witness in behalf of defendant, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Hogan.

Q. What is your name?

A. Joseph M. Hayse.

Q. What is your business or profession?

A. Lawyer.

Q. How long have you been engaged in the practice of that profession?

A. In Louisville since April, 1923, previous to that time I practiced in Columbia, Tennessee, since March 3rd, 1917.

Q. From what school or schools are you a graduate?

A. Well, I began practicing law before I went to law school. I later went to the Cumberland University at Lebanon, Tennessee. I then went to Westminster Law School in Denver, Colorado, and then I later went to the Fordham University Law School, New York City.

Q. Did you ever attend West Point?

1539 A. I did.

Q. How long have you been practicing in Louisville?

Testimony of Joseph M. Hayse

A. Since April, 1923.

Q. Are you acquainted with Ann Fowler Woollet?

A. Well, I saw her on two or three occasions, probably four, before I saw her in the court house.

Q. In September, 1935, were you made acquainted with her?

A. Yes.

The Court: What date?

Mr. Hogan: September, 1935.

Q. Tell the jury the circumstances of your meeting with her?

A. She and her husband came into my office to consult me and also concerning giving me a statement concerning the facts and circumstances in the Robinson-Stoll kidnapping case.

Q. Did she come to your office with her husband, Fowler Woollet?

A. She did.

Q. Was that office in Louisville, Jefferson County, Kentucky?

A. It was.

Q. In your law office here?

1540 A. In my law office; yes, sir.

Q. Did she consult with you on that occasion?

A. She did.

Q. About the facts of the Robinson-Stoll kidnapping case?

A. She did.

Q. And also with reference to a claim that she believed that she had against Mr. Berry Stoll and his wife, Alice Speed Stoll?

A. She did.

Q. Did she make some statements to you with reference to the Robinson-Stoll kidnapping case and with reference to her claim, or claim that she believed she had, on that occasion?

A. She did. She gave me a complete statement, going into every detail from beginning to end.

Q. Do you recall the date in September of the visit of Ann Hobbs Woollet to your office?

Testimony of Joseph M. Hayse

A. I can't tell you the exact day, but it was either on the 9th of September or preceding that, within two or three days preceding that.

Q. Did she on that occasion give you a full, detailed and complete statement about the Robinson-Stoll kidnapping case?

A. She did.

1541* Q. When you say a full and complete statement, why was that full and complete statement given to you or taken by you?

A. Well, that statement that she told me orally was not reduced to writing, that is, the one she gave me in the office, but she gave me all the details.

Q. Whether it was written or unwritten, did she make certain statements to you in your office about this Robinson-Stoll kidnapping case and about her supposed claim?

A. Yes. She made statements concerning the entire matter about the Robinson-Stoll kidnapping and the way she was treated by the Stolls, told me all about it orally in the office and it was later reduced to writing, practically in substance, if not in the exact words.

Q. Did she make statements to you as to what happened in the Alice Stoll residence after Mrs. Stoll's return from Indianapolis?

A. She did.

Q. Was that an oral statement to you?

A. The statement she made in the office to me was an oral statement.

Q. Was that likewise, that statement I have just referred to, a full and detailed statement?

A. It was.

Q. Was that statement or those statements that
1542 she made to you then reduced to writing?

A. They were.

Q. I mean, in your office at that time?

A. No. They weren't reduced to writing in the office. They were reduced to writing in narrative form at my residence at 2216 Confederate Place, I think the date is the 9th of September, 1935. The statement reduced to writing is in narrative form and contains substantially

Testimony of Joseph M. Hayse

what she told me in the office.

Q. But she did make a statement to you in your office.

A. She did.

Q. It has been stated by Mrs. Woollet that she never consulted you—

Mr. Brown: I am going to object to any recalling of testimony, any attempt of comparison.

The Court: I think that's a matter of argument. That testimony is already in.

Q. You stated that she later made a similar statement or a statement in substance of what she had told you in your office, made that statement in writing at your home.

A. She narrated the events at my home to Mrs. Hayse who took it down in shorthand and transcribed it into type-written form, which she later signed and swore to.

Q. Were you present when she dictated it?

1543 A. I was present when she narrated it to Mrs. Hayse; yes, sir.

Q. Did Mrs. Hayse procure the signature of Mrs. Ann Hobbs Woollet to that statement that had been reduced to writing?

A. She signed that statement, Mrs. Ann Hobbs Woollet, and swore to it.

Q. Did you see her sign it?

A. I can't say positively that I saw her sign it, but my recollection is that I did.

Q. Did she swear to it?

A. She did.

Q. Who swore her to it?

A. Mrs. Hayse.

Q. Were the statements that were reduced and contained in this written statement substantially the same that had been given orally to you in your office by Ann Hobbs Woollet?

A. They were.

Q. Don't answer the question until the court rules on it. Will you please tell this jury what statements Ann Hobbs Woollet made to you in your office and which were later reduced to writing in your home and sworn to by her?

Mr. Brown: That's the matter we discussed in cham-

Testimony of Joseph M. Hayse

1544 bers, Your Honor.

The Court: Objection by the Government. Members of the jury, the objection will be sustained on the ground that conferences between a lawyer and a client about a legal matter, upon which the client is seeking advice, are privileged communications and if the client so desires they are not to be repeated by the attorney to anyone else. Accordingly, the court holds that those communications are not to be divulged as they were made in confidence between a lawyer and his client about a legal matter the client was asking his legal advice upon.

Mr. Hogan: My point there is, Your Honor, that this witness, Ann Hobbs Woolet, is in an inconsistent position to claim—

Mr. Brown: I don't know that there is any point of arguing this point before the jury. We argued it thoroughly in your chambers.

The Court: I think you can raise that point in any argument you want. It has already been raised to me. I don't know that it is necessary for the jury to have it. It is purely a legal point.

Mr. Hogan: Then I will object to the court's ruling that Mr. Hayse may not answer or detail what he remembers Ann Hobbs Woolet to have said to him and what was later reduced to writing, and make an avowal that the witness, Joseph M. Hayse, if permitted to answer,

1545 would say and it would be true, certain statements of which we discussed also in chambers and which are in the written statement and which the stenographer has, without having to repeat them.

The avowal above referred to is as follows: 7

AVOWAL

The witness, Joseph M. Hayse, if permitted to answer, would say, and it is true, that Ann Hobbs Woolet came to his law office in Louisville, Jefferson County, Kentucky, on or about September 9th, 1935, and while there made oral detailed statements of, about and concerning the facts of the Robinson-Stoll kidnapping case, facts before the taking of Alice Stoll from her home, and facts that

Testimony of Joseph M. Hayse

happened in the Speed home, and facts that happened after Mrs. Alice Stoll's return on October 16th, 1934, in the home of Alice Speed Stoll on Lime Kiln Road; that the witness, Nellie Stoess Hayse, if permitted to answer, and it would be true, would say that Ann Hobbs Woollet came to her home, being also the home of the witness, Joseph M. Hayse, at that time located on Confederate Place in Louisville, Kentucky, and that Ann Hobbs Woollet made certain oral statements to her of, about and concerning the Stoll kidnapping case before and after the taking of Mrs. Alice Speed Stoll, and after her return in October, 1934;

1546 that the witnesses, Joseph M. Hayse and Nellie Stoess Hayse, would say that Ann Hobbs Woollet's statements to Nellie Stoess Hayse were taken by Nellie Stoess Hayse in shorthand and later transcribed by Nellie Stoess Hayse on the typewriter into a written statement, and by Mrs. Ann Hobbs Woollet signed, subscribed and sworn to by Ann Hobbs Woollet on September 9th, 1935; that the witnesses, Joseph M. Hayse and Nellie Stoess Hayse, would say further, if permitted to answer, and those statements would be true, that the statement given to Joseph M. Hayse in his office by Ann Hobbs Woollet and the statement given to Nellie Stoess Hayse and Joseph Hayse in the Hayse home on Confederate Place is in substance, in words, figures and phrases, to wit:

"Before this time, she calls me up there, and wants me to bring her some pumpkin seed and I took them up there, and Robinson comes up and smiles at her, I thought it was just politeness then. She didn't look at him mean or anything, but just looked at him, I suppose you would call it a faint smile, but didn't crack her face. She didn't seem frightened or frantic, and was very calm. She must have known him before, as she didn't appear frightened, and did so much talking and kept her nerve, and she asked him what he was going to do there, I don't

1547 remember the exact words. I don't believe she made any reply to that right at that time. I think she just sort of sat and looked at him, sort of like she

Testimony of Joseph M. Hayse

was thinking. She didn't seem to be particularly excited, or disturbed about it. I don't know who said it, but I know she wanted to offer him a check, and he wouldn't have that, of course. While she is sitting there in a rocking chair. He is nervous, he is afraid Berry Stoll is coming in there before he gets away, she seems to be in a hurry, I guess you call it, and he wants to hurry up and get away, get her all wrapped up before Berry comes home, and then she said, 'hurry' or 'let's go,' or something to the effect, showing that she was willing to go.

Mr. John Tarrant, lawyer for the Stolls, Mr. Stoll came down and told me that they wanted the house cleared out, and everybody away, and John Tarrant took us to W. S. Speed's over on Lexington Road. Mrs. Speed entered the door and took us up to the servants' quarters and put us in a very cool room, a cold room. Just had a little bed and a dresser in there, and I thought I was in jail for sure. it was so bleak looking. It was in the early evening, about 5 or 6 o'clock. We didn't want to stay there, I just couldn't stand it, and I felt that I wanted to see
 1548 my mother, so bad, so I cried and took on pretty bad, and we wanted to leave, and Mrs. Speed wouldn't let us leave, she said, 'There have been orders for you to stay here,' and she had our supper sent up to us, then along about 8 o'clock, Mrs. Speed comes in and tell us 'Alice has been returned,' and she didn't act very thrilled, just calm. They had told us in the afternoon that she was going to be returned, that is why we had to leave the house.

After that we went to bed, and we spent the night there, and the next morning early I would say around 7 o'clock, she orders a taxi for us, and we get in this taxi, and go back to Berry Stoll's. Mrs. Speed asked me—I was downstairs in my bedroom—and she asked me to go up there and clean up Mrs. Stoll's room, as there were no women in the house. That was on Wednesday. So I went up to clean her bedroom, and see her, listen I went to see her, though,

Testimony of Joseph M. Hayse

before I went up to clean, just as soon as I got back to the house, she put her arms around me and kissed me, and this just shocked me to death, because she is sort of cold natured, and while cleaning her room, dusting, I raised a pillow up on a longing chair, and I found a pile of money there, and it frightened me so I just dropped the pillow, and I don't know whether

1549 anybody knows I saw it or not, and when I got through I went back to bed. That just made a cold chill run over me when I saw that money. From then on, I didn't do anything, I was just up and down in bed most of the time, and then it was in this time that the doctor came to see me. After that I was just in bed most of the time. There never was anything said to me about the money. It wasn't fastened together, it was just sort of a nice bulk. It might have had a rubber band around it, I don't know. It was in currency. After I cleaned up the room, I went back to bed.

We stayed at the Stolls then until Sunday morning. Then Stoll came down and told us he didn't need us any more, it was not told in my presence but I heard it outside my room. I heard him tell Fowler simply that he wouldn't need us any more that he was going to close up the place, and he didn't want to see it any more. He said he might open it up in the spring, and Fowler asked him if he would need him then, and he said he just didn't ever want to see the place again, he was going to close it up, but he didn't close the place up at all. I heard Fowler tell him that I was sick, I couldn't be moved, and he said, 'The sooner the better.' He didn't give any reason why we had to leave except he didn't want to see the place any more. Mrs. Stoll couldn't stand to see me. He said that we would all be better off.

1550 We just got ready and left, and before we left, Mrs. Woollet, Fowler's mother, Agnes Woollet, asked him for a written statement that 'These children were free of all suspicions,' and he said he would be glad to but he had to get permission from the authority or

Testimony of Mrs. Nellie Stoess Hayse

something before he could do it, and he never did do it. I told him that I would like to see Mrs. Stoll before I left, and he came down and told me that I couldn't see her that she was resting and was not feeling well."

Mr. Hogan: You may ask him.

Mr. Brown: I don't care to ask him.

Mr. Hogan: Call Mrs. Hayse.

Mr. Brown: Couldn't we agree, in the interest of time, that Mrs. Hayse would testify the same as Mr. Hayse?

Mr. Hogan: Well, I would like for the jury to see her.

MRS. NELLIE STOEES HAYSE, called as a witness in behalf of the defendant, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Hogan.

Q. You are Mrs. Nellie Stoess Hayse?

A. Yes, sir.

1551 Q. The wife of Joseph M. Hayse, I believe.

A. Yes, sir.

Q. Are you an attorney?

A. Yes, sir.

Q. From what school or schools are you a graduate?

A. I have completed part of the law school work at the University of Louisville, but I have not graduated from that school.

Q. Have you been admitted to practice law in the State of Kentucky?

A. Yes, sir.

Q. Are you engaged in that practice now?

A. Yes, sir.

Q. How long have you been so engaged?

A. Since October, 1942.

Q. Were you married to Mr. Hayse in 1935?

A. Yes, sir.

Q. During the month of September, 1935, with particularity, September 9th, 1935, did you have an occasion

Testimony of Mrs. Nellie Stoess Hayse

to become acquainted with Ann Hobbs Woollet?

A. Yes, sir.

Q. Will you please tell the jury the circumstances of that acquaintanceship?

A. Well, I understand that Mrs. Woollet had talked to Mr. Hayse in the office.

Mr. Brown: Object to what she understands.

1552 Q. Not what you understand.

The Court: Objection sustained as to what you understand. Just tell what happened between you and her.

A. She came to the house and gave me a statement of what she knew or the facts that she knew concerning the kidnapping case.

Q. By that, to what kidnapping case do you refer?

A. The Robinson-Stoll kidnapping case.

Q. Did she make that statement or statements to you voluntarily?

A. Yes, sir.

Q. You were not an attorney at that time?

A. No, sir.

Q. Were those statements in rather minute detail?

A. Very minute.

Q. Did you take them in shorthand notes?

A. Yes, sir.

Q. Did you transcribe them later?

A. Yes, sir.

Q. Did she sign that statement that you had transcribed?

A. She did.

Q. Was the statement that was reduced to writing and that was signed by her, the statements that she
1553 had detailed or narrated to you?

A. Yes.

Q. Without any material change?

A. There were one or two slight corrections which were made when she re-read the statement.

Q. Who made those corrections?

A. She did.

Q. Was she afforded an opportunity to examine the

Testimony of Mrs. Nellie Stoess Hayse

statement that had been reduced by you to writing?

A. Oh, yes.

Q. To see if it was a correct statement?

A. Yes, she re-read the statement.

Q. Did she complain that it was not a correct statement?

A. No.

Q. Did she readily sign it?

A. Yes, sir.

Q. Were you a notary at that time?

A. Yes, I was.

Q. Did you swear her to that statement?

A. Yes, sir.

Q. I'll show to you, Mrs. Hayse, what purports to be that statement that you have related and which you say was reduced to writing, and ask you to examine it and tell this jury what date it bears.

1554 A. September 8th, 1935.

Q. Now, was it sworn to on that date?

A. On September 9th, 1935.

Q. How do you account for the difference in the date of the making and the swearing of that statement?

A. On September 8th she came and gave me the statement, and on September 9th she came back and re-read it and signed, swore to it.

Q. Is that her signature?

A. Yes, sir.

Q. Did you see her sign it?

A. Yes, sir.

Q. I will ask you to read to the jury the signature to it.

A. It is signed, "Mrs. Ann Hobbs Woollet."

Q. Is that sworn to by you as a notary?

A. Yes, sir, before me as a notary.

Q. Did she swear then that those statements contained therein were true?

A. Yes, sir.

Q. Did those statements bear directly and in detail upon the facts of this Stoll-Robinson kidnapping?

A. She swore that that was the statement which she

Testimony of Mrs. Nellie Stoess Hayse

had made.

Q. I say, did they bear directly upon that
1555 Stoll-Robinson kidnapping case?

A. Yes, sir.

Q. Will you tell the jury what statements she made to you and what statements you later reduced to writing and had her swear to? Before you answer, there is going to be an objection.

Mr. Brown: Objected to.

The Court: Objection sustained, on the same ground with reference to the statements made to Mr. Joseph H. Hayse.

Mr. Hogan: And I wish to make an avowal.

AVOWAL

The witness would say, and it would be true, if she were permitted to answer, that Ann Hobbs Woollet made the following statements:

“Before this time, she calls me up there, and wants me to bring her some pumpkin seed and I took them up there, and Robinson comes up and smiles at her, I thought it was politeness then. She didn’t look at him mean or anything, but just looked at him. I suppose you would call it a faint smile, but didn’t crack her face. She didn’t seem frightened or frantic, and was very calm. She must have known him before, as she didn’t appear frightened, and did so
1556 much talking and kept her nerve, and she asked him what he was going to do there, I don’t remember the exact words. I don’t believe she made any reply to that right at that time. I think she just sort of sat and looked at him, sort of like she was thinking. She didn’t seem to be particularly excited, or disturbed about it. I don’t know who said it, but I know she wanted to offer him a check, and he wouldn’t have that, of course. While she is sitting there in a rocking chair. He is nervous, he is afraid Berry Stoll is coming in there before he gets away, she seems to be in a hurry, I guess you call it, and he wants to

Testimony of Mrs. Nellie Stoess Hayse

hurry up and get away, get her all wrapped up before Berry comes home, and then she said, 'hurry' or 'let's go,' or something to the effect, showing that she was willing to go.

Mr. John Tarrant, lawyer for the Stolls, Mr. Stoll came down and told me that they wanted the house cleared out, and everybody away, and John Tarrant took us to W. S. Speed's over on Lexington Road. Mrs. Speed entered the door and took us up to the servants' quarters and put us in a very cool room, a cold room. Just had a little bed and a dresser in there, and I thought I was in jail for sure, it was so bleak

1557 looking. It was in the early evening, about 5 or 6 o'clock. We didn't want to stay there, I just couldn't stand it, and I felt that I wanted to see my mother, so bad, so I cried and took on pretty bad, and we wanted to leave, and Mrs. Speed wouldn't let us leave, she said, 'There have been orders for you to stay here,' and she had our supper sent up to us, then along about 8 o'clock, Mrs. Speed comes in and tells us 'Alice has been returned,' and she didn't act very thrilled, just calm. They had told us in the afternoon that she was going to be returned, that is why we had to leave the house.

After that we went to bed, and we spent the night there, and the next morning early I should say around 7 o'clock, she orders a taxi for us, and we get in this taxi, and go back to Berry Stoll's. Mrs. Speed asked me—I was downstairs in my bedroom—and she asked me to go up there and clean up Mrs. Stoll's room, as there were no women in the house. That was on Wednesday. So I went up to clean her bedroom, and see her, listen I went to see her, though, before I went up to clean, just as soon as I got back to the house, she put her arms around me and kissed me, and this just shocked me to death, because she is sort of cold natured, and while cleaning her room, dusting, I raised a pillow up on a lounging chair, and I found

1558 a pile of money there, and it frightened me so I just dropped the pillow, and I don't know whether

Testimony of Mrs. Nellie Stoess Hayse

anybody knows I saw it or not, and when I got through I went back to bed. That just made a cold chill run over me when I saw that money. From then on, I didn't do anything, I was just up and down in bed most of the time, and then it was in this time that the doctor came to see me. After that I was just in bed most of the time. There never was anything said to me about the money. It wasn't fastened together, it was just sort of in a nice bulk. It might have had a rubber band around it, I don't know. It was in currency. After I cleaned up the room, I went back to bed.

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1559 I couldn't be moved, and he said, 'The sooner the better.' He didn't give any reason why we had to leave except he didn't want to see the place any more, Mrs. Stoll couldn't stand to see me. He said that we would all be better off.

We just got ready and left, and before we left, Mrs. Woolet, Fowler's mother, Agnes Woolet, asked him for a written statement that 'These children were free of all suspicions,' and he said he would be glad to but he had to get permission from the authority or something before he could do it, and he never did do it. I told him that I would like to see Mrs. Stoll before I left, and he came down and told me that I couldn't see her that she was resting and was not feeling well."

Mr. Hogan: That's all, Mrs. Hayse.

Testimony of Mrs. Nellie Stocess Hayse

The Court: Any questions, Mr. Brown?

Mr. Brown: No, sir.

The Court: Mrs. Hayse, were you employed by your husband at that time?

The Witness: No, sir.

The Court: You helped him with his work?

The Witness: Yes, sir.

The Court: You took this statement at his request?

The Witness: Yes, sir.

1560 The Court: And he brought Mrs. Woollet to the home?

The Witness: Well, I am not sure whether he brought her or she came.

The Court: You didn't ask her to come?

The Witness: No, sir.

The Court: She came with him?

The Witness: I don't know whether she came—

The Court: He was present?

The Witness: He was present; yes, sir.

The Court: At all times?

The Witness: Yes, sir.

The Court: All right.

DR. LEON L. SOLOMON, called in behalf of defendant, resumed the stand, and was examined and testified as follows:

Direct Examination Continued by Mr. Hogan.

Q. Dr. Solomon, what do you understand a delusion to be?

A. A delusion is a mental state that is founded upon a false premise in which the condition of the mind is such as not to be able to argue out and to determine its incorrectness.

1561 Q. What is an hallucination?

A. That is a mental state, not necessarily associated with any permanence of mental disturbance, which may be brought about by drugs, alcohol, ether, chloroform,

Testimony of Dr. Leon L. Solomon

or someone of the so-called somnifacient drugs, the sleep producers, which act as delirifacient, as it involves—hallucinations involve those mentally disturbed. They are generally of two varieties, the so-called auditory hallucinations and those that are visual, the individual hears things, or thinks he hears things, insists that he does hear them, or he sees things, or thinks that he sees things that in actuality do not exist.

Q. Do you know whether in medical science, or as believed to be or exists, a subjective mind and an objective mind?

A. There is what the psychiatrist today undertakes to define as a conscious or subjective mind as against an unconscious or objective mind.

Q. I believe the thoughts or ideas are formulated in the subjective mind.

A. The conscious subjective mind formulates and discovers or invents ideas blood goes through the gray matter, which the objective mind should, if there is no riotous condition between them, be able to execute.

Q. In a normal person, should there be cooperation and coordination between the subjective mind and the objective mind?

A. In the individual who is perfectly balanced, or as near perfectly balanced as the human animal can be, there must be coordination between the conscious and the so-called unconscious objective mind.

Q. In a normal person, is there usually coordination between those two minds?

A. There is coordination between those two minds.

Q. What do you understand as a medical man of the term dementia praecox?

A. It is a very large subject in which, naturally, there are differences of opinion. As a rule, the dementia praecox is a precocious individual and has been as in the early years before the teen age has come about and thereafter, for some reason, or maybe without any known reason, that individual topples over and begins to show certain strange behavior types and attitudes running into a great variety of directions.

Testimony of Dr. Leon L. Solomon

Q. What is the term schizophrenia as understood by medical science?

A. The French psychiatrists talk more about schizophrenia than do we in this country. It is, as the word indicates, a so-called split or disturbed state of mind.

1563 Q. Now what do you mean by split mind or split personality? We are way up in the clouds now, we want to get down to earth so I'll understand it.

A. And it is very difficult to get down to earth with schizophrenics. They are strange, erratic personalities who may lead in a certain field and direction, and yet not be persistently and permanently dependable. As a rule, irritable, fractious, what we in Kentucky call "carrying a chip on the shoulder," and likely to take offense when no offense was intended and none should have been taken.

Q. Now, in these dementia praecox types, are sometimes the subjects pleasant and sociable, or apparently so?

A. They are as a rule pleasant, if they can be. Without rhyme or reason they become unpleasant, often morose, often melancholic. They make up what we call, and again I use the Kentucky phrase, "the hippos," the hypochondriacs, who are in states of exultation today and tomorrow may be in a state of dejection. They are what the French call "liable," up and down and not stable or stabilized.

Q. Then would you say that it is possible to have in one individual an unstable person and a stable person.

A. Oh, yes.

1564 Q. Varying at different times?

A. The stability being a matter of conditions that exist in the emotional nervous system and in the sympathetic nervous system, and the instability resulting from a riotous, unstable, instable condition in the nervous system.

Q. What is understood by the term paranoid type of dementia praecox?

A. The paranoid type has fixed delusions which he pyramids, from which he is unable to get away. They force him into acts which because of the instability of his nature will permit him to do or actuate him or impel him to commit some great act of depredation, violence, de-

Testimony of Dr. Leon L. Solomon

struction, set fire to a building for no reason, kill his best friend, for no reason, because of maybe voices that he hears, maybe instructions that he thinks he gets from powers on high.

Q. Do these paranoid types ever assume in their own mind that they are a reincarnated personage?

A. They sometimes have a religious trend in which they are at times, devout continuous readers of the Bible and will find in the Bible some justification for the thing they are about to do. They are unable to reason out because of fixed delusions, the justification of their act.

They not infrequently assume that they are super-
1565 men or super-women and are above the reach of moral law or of the law of the land.

Q. Do they ever assume the personages of patriots or statesmen?

A. They assume all kinds and sorts of personages. I had a lady at the jail the other day who had been out with Jesus and plowing fields, and when I tried to reason with her that so far as we knew this character he was not a farmer. She said she had told him that that is what he should do and he had given up carpentry.

Q. Now, have you any other example not quite so aggravated as that?

A. Many, many examples may be brought up by the physician of experience. I had a dementia praecox, I think he loved me better than he did his mother and his father, and yet as I slept in his room he raised a chair with the nurse out of the room at the moment and attempted to brain me, struck me over my knees and my shins, and when I cried out in pain he was very apologetic, but when I was able to get on my feet he said, "I wish to God I had killed you. I have been authorized to do it."

Q. Was that a manifestation of two types of dementia praecox within a few moments?

A. That was a young man who had suffered a terrific insult to his body and mind at college, where he
1566 had been taken out by older boys and masturbated and who lost his mind the next day.

Q. Does masturbation play any part in the deteriora-

Testimony of Dr. Leon L. Solomon

tion of the mind?

A. I beg your pardon?

Q. Does masturbation play any part in the deterioration or instability of the mind of a person?

A. I do not believe that masturbation deteriorates the mind. I think that the deteriorated mind, or in a state of temporary or permanent deterioration, is the cause of masturbation rather than an effect from masturbation.

Q. Would you say that same thing with reference to persons having sex troubles?

A. Dementia praecox is a disease of early adolescence. There are four internal glands. One is in the brain, the pituitary; one is in the neck, the thyroid; one is behind or above the kidney, the adrenal or suprarenal; the other is the testicle. Those four glands, I think, control man, and the dementia praecox as a rule is a masturbator. He is often times a sex pervert.

Q. Do these paranoid types of dementia praecox sometimes assume the role or idea of grandeur?

A. That is a phase of dementia praecox, but not nearly so likely to assert itself as is the grandiose ideas of the syphilitic.

1567 Q. Now you mentioned that syphilitic term.

Have you had experience with venereal disease, and particularly syphilitic, and are you fairly or at all familiar with the effect of that disease upon the mind?

A. I think I am fairly familiar with the influence of syphilis on the body and the mind of man.

Q. Suppose you tell the jury some of your qualifications along that particular subject and along that particular line as it affects the body and the mind of man, and woman too, for that matter?

A. I would say that no physician can practice medicine without a knowledge of syphilis. The civilized world is becoming syphilized. Syphilis in its manifest influence on the mind and body of man plays so important a role that the doctor must of necessity be a student of syphilis. I have striven to study syphilis throughout a lifetime.

Q. What have you found out that your study and treatment of that disease has upon the mind of man?

Testimony of Dr. Leon L. Solomon

A. Syphilis runs as a rule through three stages, a primary stage in which there is an ulcer, a secondary stage in which there is, as a rule, a breaking out on the body with what we call mucous patches, involving the mucous membranes, more particularly the throat. Syphilis untreated enters a third stage in which there is a
1568 generalized involvement, and untreated, sometimes treated, involves and destroys the central nervous system. It makes of the man or woman a so-called parietic, giving rise to what in former years the public called "white softening of the brain," an incorrect medical term it is. Treated, syphilis is curable. It has always in a sense been curable. I do not believe—I personally do not believe a man ever is cured in the sense that he is absolutely well. He is cured in the sense that he is well, but will in all likelihood have recurrences of the disease unless he has further treatment.

Q. Now, Doctor, I want to stop you there. You say you personally believe. I want your medical opinion as well as your personal opinion on that.

A. There were six hundred and six experiments performed by a noted Heidelberg physician, Professor Ehrlich, his six hundred and sixth experiment constituting what is known sometimes as "606" or "salvarsan," an arsenical preparation. Given in sufficiently large doses and with proper regularity, salvarsan removes from the blood stream what is known as the spirochete, a low form of life which for terms of better understanding might be called the germ of syphilis. It is not a germ. Properly treated over a period of time, the individual becomes more or less innocuous so far as his conveying the disease is concerned, he cannot convey it to another person, and the treatment
1569 continued with other remedies which have since the advent of neosalvarsan and salvarsan come into use, more particularly bismuth, the man or woman with syphilis goes ahead and lives out his span of life irrespective of having acquired the disease.

Q. Has the damage been repaired from the contraction of the disease?

A. That is questionable. In the very early stages of

Testimony of Dr. Leon L. Solomon

syphilis, the dose sometimes is so large that the individual has acquired, that within six weeks or two months he has an irritation of the covering of his brain, what we know as the meninges, develops an acute or subacute or acute chronic meningitis. That man for that time being is unsound mentally, he almost invariable recovers when he is given treatment. And the man who is apparently sick beyond repair, who is wholly unsound, who is a paretic and who goes to the asylum, is today treated by the implantation of malaria, the purpose being high temperature, he is allowed to be bit by a mosquito which is the carrier of the malarial parasite. He develops a temperature of a hundred and five, six, seven, eight, nine, and there is burned out of his nervous system, about as proper way as I might describe it, by this terrific temperature. There are other means of administering the treatment than by malaria, other forms of heat. These men get well, and though the treatment is fairly new—we have used it for about fifteen years—I have innumerable patients who have gotten well, have remained well for as much as ten and twelve years.

Q. Do you know the defendant, Thomas H. Robinson, Junior?

A. I do.

Q. When did you first know him?

A. I first saw him a short while after he reached the Jefferson County Jail.

The Court: This year?

The Witness: This year.

Q. About the 1st of October, 1943, would you say?

A. In the early part of October, I think it was.

Q. Did you make a physical examination of him at that time?

A. I did.

Q. Will you tell the jury what you found from your examination of him?

A. At the time I examined Thomas Robinson—

Q. Junior.

A. Junior—Thomas H. Robinson, Jr.—he was in what appeared to me to be splendid physical health. His body

Testimony of Dr. Leon L. Solomon

was browned as if he had been in contact with the sun, his muscles were vigorous, his skin was healthy, 1571 his reflexes were normal. He had no enlargement of any of the glands that I could palpate, the glands in his neck, and his groin. He was apparently in the possession of good health. He had a high blood count, the red blood coloring matter was high, in the 90's, his red blood cells were in excess of 4,750,000 per cubic centimeter. His urine was normal, no albumin, no casts, the specific gravity within normal bounds. His eyes were examined by me, but because I am not an eye specialist were examined for me by one of Louisville's ophthalmologists. I could see no evidence whatsoever of any markings which might have come about from syphilis. I had assured myself that he had syphilis. He shows an unmistakable scar of a primary lesion. His retina was normal. His vision, corrected by glasses, was 20-20. He had unmistakable evidence of having been the subject of tuberculosis in the upper portion of both lungs. He had no cough, no moisture. By that I mean, no rattles in his lungs that would indicate that he had tuberculosis, and yet by percussion—I mean by that (indicating)—I could find areas in his lungs that were here and there solidified.

Q. Have you examined him at any other time than that first occasion?

A. I have frequently examined him, and after he had been in Louisville about ten days or two weeks he 1572 began to cough—I should have said that his temperature was normal, both in the morning when I saw it and in the afternoon.

Q. That's the first occasion?

A. When I first saw him. On each occasion his pulse was normal, running along about 76 to 80. Before long I discovered that he had what might be called a recrudescence or relapse. He has the physical signs, did when I examined him the other evening, unquestionable physical signs of tuberculosis, active in the upper portion of his right lung, slightly active, I think, in the upper portion of his left lung. I undertook to have him X-rayed, but there was no machine in Louisville that could be transported to the jail

Testimony of Dr. Leon L. Solomon

and would give us a satisfactory X-ray plate, so I gave it up, but he has the physical signs of a recurrent tuberculosis, in one lung I am sure, possibly in the other lung, has a temperature of a hundred or in excess of a hundred in the late afternoon, he has a temperature that is normal or sub-normal in the early morning. Pulse is rapid. He has tuberculosis.

Q. Would it be detrimental for him to be confined—his health, I mean?

A. A man with tuberculosis should be treated for tuberculosis, preferably in an institution prepared to
 1573 treat tuberculosis, with an abundance of fresh air and sunshine, and having reached thirty-six years of age, or almost thirty-six, I think he is past thirty-six, he should make a recovery again as he did from his previous encounter.

Q. Did you obtain from him at the time of your examinations any history of his past troubles?

A. I have a very complete history of Thomas H. Robinson, Jr. and from his mother and from one of his physicians in Nashville, I would say from the time of his birth to the time of his committing of this grievous offense.

Q. Will you tell the jury what that history is?

A. This boy was born about thirty-six years, a little over thirty-six years ago, of a mother—

Mr. Brown: Aren't we getting pretty far afield on that?

The Court: Isn't the history the same thing that you are going to put in your hypothetical question?

Mr. Hogan: More or less, Your Honor.

The Court: If the doctors are going to have those questions presented to them—the jury has already had those matters before them. What the doctor can give you, of course, is only hearsay.

Q. I will ask you this, Doctor, did you endeavor to obtain first-hand information yourself of his stay in
 1574 the Central State Hospital?

A. I went to the Central State Hospital and there conferred with, I think a Commissioner of Health. I have his name in my records, who was present, together

Testimony of Dr. Leon L. Solomon

with one of the physicians, whose name I have in my records, and I looked over the record at the—I believe they call it the Central State Hospital, a few miles outside of Nashville. I am familiar with that record.

The Court: That record has been read to the jury, hasn't it?

Mr. Hogan: Yes.

Q. Have you seen, Dr. Solomon, that record from the Central State Hospital?

A. Yes. I discussed this record with Dr. Brackin in Nashville, and discussed it again with him last night. I am familiar with this record.

Q. Are you also familiar with that report of Dr. Brackin and the other three doctors to Judge Hart?

A. I am familiar with this record and discussed that with Dr. Brackin and with Dr. Love.

Q. You are familiar with the contents of those two documents then?

A. I am.

Q. Do those documents assist you or enable you
1575 to formulate an opinion about this defendant's mental condition?

A. Well, you couldn't undertake to formulate an opinion except that you had the antecedent record and that you could compare it with your own findings today, so that I was assisted in reaching my conclusion by this and numerous other records that were shown to me concerning Thomas H. Robinson, Jr.

Q. Doctor, I will ask you what effect the participation or rather the partaking of alcohol has upon a dementia praecox personality?

A. Well, as we all know, alcohol except in moderation has a deleterious influence on the entire body and particularly the nervous system. It would accentuate, accelerate or precipitate a dementia praecox if there was an underlying reason for it.

Q. What is a psychopath or psychopathic personality, or constitutional psychopath?

A. You are asking now a number of questions. A psychopath, the word psycho refers originally to the soul

Testimony of Dr. Leon L. Solomon

and has been made to include the mind, and pathology is disease, so psychopath has a diseased mind. A psychopathic personality is an individual who is to a certain extent the subject of a diseased mind, the degree or extent varying. Now your other question was?

1576 Q. Constitutional psychopath.

A. The constitutional psychopath might be best made plain by the man who is a liar and who can't help from being a liar. He is a constitutional psychopath by heredity, he has something that is an affliction that has come to him constitutionally and it stays with him for the most part throughout life, though I have known some men who were liars, who were constitutional psychopaths, I know one who was a kleptomaniac and by a gracious Providence and all kind creator, so to speak, outgrew it and came straight. As a rule, a constitutional psychopath is a constitutional psychopath from birth to death.

Q. Is that any distinguishing difference between a psychopath and a dementia praecox in that the psychopath is born with it and the dementia praecox manifests itself in the person at about the age of puberty?

A. Well, I expect a dementia praecox is born with it as a dementia praecox, goes along until the age of adolescence and then something happens to topple him over, though there is a vast difference between the dementia praecox as we see them by the hundreds and thousands, and the constitutional psychopath. The degree is tremendously different between a dementia praecox and a constitutional psychopath.

1577 Q. Is there any distinguishing difference between a psychopathic personality and a constitutional psychopath?

A. I think there is. The psychopathic personality becomes such as a result sometimes of great strain. A mother becomes psychopathic, laboring under tremendous strain, with a husband or a child, or a sister, or someone near to them. We are getting as a result of this war nervous systems that are breaking down because of what we are hearing over the radio and reading in the newspapers. Recovery takes place for the most part from such condi-

Testimony of Dr. Leon L. Solomon

tions when the strain is released.

Q. Is a psychopathic personality or constitutional psychopath an insane person?

A. They are certainly insane. While they may be labeled as a psychopath, whenever you apply the label of psychopath you mean unsound mind and lunatic.

Q. Dr. Solomon, I want to ask you this question. Have you made any arrangements with the defendant, Thomas H. Robinson, for the payment of your fee for any services in this connection?

A. None other than to say to him that under no circumstance would I accept a fee from him.

Mr. Brown: Your Honor, I am going to object to that because a motion was made to pay this witness a fee on behalf of the defendant.

The Court: I think the jury should be instructed
 1578 that defendant's counsel made a motion that the fee of this witness as an expert witness be paid by the Government and that motion was sustained.

Mr. Hogan: I wanted specifically to show that, Your Honor, that the Government is going to pay Dr. Solomon.

The Court: On the defendant's motion because the defendant claims to be a pauper.

Mr. Hogan: And I think along that line the jury should be instructed that the defendant has been permitted on his motion to proceed in forma pauperis.

The Court: Yes. The defendant made an oath that he was a pauper and asked to proceed in this case in forma pauperis, which motion was granted, and following that motion another motion was made by the defendant's counsel that the fees of the medical witnesses be paid by the Government, which motion was sustained.

Mr. Hogan: Now I think we are ready for that long question. Did you want to ask Dr. Solomon anything before we go into that?

Mr. Brown: No. I think I will conclude my examination when you conclude yours.

Mr. Hogan: All right.

The Court: You can probably get that question in just about lunch time, I guess.

Testimony of Dr. Leon L. Solomon

1579 Mr. Hogan: I think so.

The Court: All right. Bring Dr. Crice in.

(Dr. Crice was thereupon called into the court room.)

Q. Addressing my question now, which will be a hypothetical question, to you, Dr. Crice, and to you, Dr. Solomon, that hypothetical question is as follows:

The Court: Probably I should explain to the jury first, with reference to this hypothetical question, that for the purposes of the question certain facts are assumed by the attorney asking the question. Those facts, some of them, at least, may be in dispute in this case or in this trial, and you are not to assume yourself, in hearing this question asked, that those facts have been established. Whether or not those facts are established is one of the questions for you to decide when you consider your verdict, but the question will be asked on the assumption that those facts exist, and, of course, if those facts don't exist the answer might be modified to some extent. Whether or not the facts exist will be something for you to determine in considering your verdict.

Q. (Continuing) Assuming that Thomas H. Robinson, Junior, was born May 5th, 1907; that he was conceived at the time his father was a heavy drinker; assuming that after his coming into this world he grew along as an

1580 apparently normal child, and that he attended Ross School, which was a grade school, and that he attended other primary or grammar schools, and completed his grammar school course; that at about the age of eleven he was kicked by a mule or horse under his right eye, upon a bone of his face or head under his right eye, which damaged him considerably and caused him to be unconscious for sometime, and that it damaged the bony structure of that particular involved area of the face; and that when he was about fourteen years of age he had malaria in a very aggravated form, and he had that malaria for some weeks, and that rather heavy doses of quinine intermuscularly were considered necessary for the alleviation of that trouble, together with quinine given orally or by way of mouth; that following that time he contracted tuberculosis and had tuberculosis, and that he was then about the age of fifteen,

Testimony of Dr. Leon L. Solomon

and that he was placed in a tuberculosis sanitarium where he remained something less than a year; that during that period of time he was out of school and missed his studies, and that while he was in that sanitarium he had pneumonia in a very bad form, and that he had following that pleurisy in an aggravated form; that after his stay in that sanitarium he apparently made a recovery, and that he by reason of having lost time from his studies and placed in a school known as the Wallace Preparatory School, where

- 1581 he attempted to make good grades and make up time that he had lost by reason of his illness, and that he apparently succeeded in that preparatory school and did make fairly good grades, or some high grades, in his scholastic work at that school; and that he did not finish that school, lacking one subject, and that he later went to Vanderbilt University where he pursued a law course, and that he while at Vanderbilt, which was about a period of three years, two and a half years, was a member of two fraternal societies, a legal fraternity and another fraternity; that he was well liked, had a host of friends, went among the best social circles and crowds of Nashville, Tennessee; that he had a pleasing personality and went to dances, and he was a Boy Scout in his early days; that he attended the Presbyterian Church with regularity, and participated in its religious and social functions, such as Christian Endeavor Society meetings and picnics given by or for the church or by the members thereof; that he attended Bible classes of that church regularly; that he was interested in his church and in his Bible classes, and in his church affairs; that his father was a teacher or deacon in the church, I believe; and that during his life up until that time, with the exception of these maladies that had overcome him, his life had been an apparently normal life, and that while in Vanderbilt University he associated himself with a young woman and that she preferred a charge against him of carnal knowledge of her while she was under the age of consent, and that she charged him with being the father of her unborn child and had a warrant or indictment taken out for his arrest, and that he was placed under arrest by that warrant made by

Testimony of Dr. Leon L. Solomon

the girl in question and members of the authorities and members of her family and was forced to marry this girl; that within a few days, within a week, I believe, following this forced marriage a child was born to this woman; and assuming that it later developed that the girl in question admitted by writing to some other man that he, this other man was the father of that child and not Thomas H. Robinson Jr., and that Thomas H. Robinson Jr. filed a proceeding in the Davidson County Circuit Court to divorce this woman and to annul the marriage; and that during that proceeding it was developed that this woman in question had falsely accused Thomas H. Robinson Jr. of the parentage of that child, and that he was divorced from that woman; and that following that incident with reference to that forced marriage he was ostracized from society, his friends, male and female; that, although he continued in his law studies in Vanderbilt University, one of the teachers in the domestic relations class occasionally and frequently would refer to the defendant Thomas H. Robinson Jr. and his domestic relations incident, referring of course to the forced marriage; and that the forced marriage, together with being ostracized by society and his fellow men and fellow women and fraternity brothers, his acquaintances and associates in Nashville, Tennessee, and in the community in which he lived; and that his personality changed considerably, that whereas he was friendly and amiable and well liked, that he became morose and stayed to himself; that he turned upon his mother and father and assumed the idea that they were mistreating him; that they were against him; and that they were constantly correcting him; that he was then given to periods of enragement or tantrums; and that on occasions he would become so angry and his personality would change to such an extent that there would appear in his eyes a crazy or insane stare, noticeably so; and that upon one occasion he slapped his mother in a period of enragement; that he was chided by his father for so doing; that his father slapped him in return for the conduct he had displayed toward his mother and that Robinson got a pistol and threatened to shoot his father and that his

Testimony of Dr. León L. Solomon

mother stepped between them and intervened and prevented that happening; that he then later or for a second time married Mrs. Frances Althausser who became Mrs. Frances Robinson; that his life with his second wife was stormy or hectic, not because of any particular thing that his second wife did but because of this defendant's attitude and his engaging in these mad spells; assuming that on one occasion he tore into shreds his father's shirt and that on another occasion he became enraged at the actions of what he considered to be an improper action of his wife in going to the grocery store with his mother and staying a little too long; and that when his second wife came home he flew into a rage and tore the dress of his second wife into

1585 shreds; that he later got a position with the Wayne Lumber Company which he did not hold so long, and

that he was either discharged or left voluntarily; that he became dissatisfied with his home life with his second wife which was then at his mother's and father's home; that he then decided that he could get to himself and did rent an apartment for himself and his wife but that he did not have any position or any means with which to pay the rent or the necessities of life for himself or his wife; that he went to the home of a Mrs. Lamb and a Mrs. Waggoner, after having first prepared a fictitious search warrant, and went into those two homes and placed the women and the servant, or servants, or other persons in the house in another room, and told them that he was an officer of the law and that he was going to search the premises for whiskey; that there was whiskey on the place but that he did not take the whiskey but instead took jewelry and other articles of value from those two homes in question; that he took the automobile from the first home and drove it to the home of the second woman and there presented himself under the guise of an officer of the law and there took articles of jewelry and other valuables; that he took those articles and hid some of them in his own home and that he took some of

1586 them to a bank in Nashville, his home town where he was known; and that he pawned them and obtained money from them; that he took other of those valuables to pawn shops in order to secure what money he

Testimony of Dr. Leon L. Solomon

could upon them; that he at no time attempted to disguise himself but that he went about his home town and met the State Attorney at that time, the prosecuting attorney, and that made him highly nervous; that nevertheless he had known one or both of these women into whose home he had gone to get these valuables. Assuming that some months following his entering those homes criminal proceedings were instituted against him in the Davidson Circuit Court and that he was indicted for impersonating an officer and for robbery; and that a suggestion was made to the court by the defense that he was then insane; and that the court then had the defendant committed to the Central State Hospital for a period of two weeks for observation; and that while he was there Drs. Brackin, Farmer, Love and Johnson examined him and diagnosed his case, took a history from him and possibly his family; and that after those weeks of observation and diagnosing him they reported to the Davidson Circuit Court that they believed and thought this defendant was insane; and that he was a dementia praecox personality or person; and that he had been stranded on the rocks of puberty; that he was then taken

before the Davidson Circuit Court and a jury of 12 men impaneled to inquire into his sanity and that they did inquire into his sanity during the month of

1587 June 1929 and after receiving evidence upon that point and being instructed by the Court, the jury then returned a verdict that the defendant, Thomas H. Robinson, Jr., the defendant in that case and the defendant in this case, was insane; and assuming further following that adjudication of Thomas H. Robinson, Jr., as an insane person, the Davidson Circuit Court of Tennessee entered an order committing him, Thomas H. Robinson Jr., to the Central State Hospital for the Insane; and that he stayed there for a period of 11 months; and that during that 11 months period he was observed and diagnosed and brought before staff meetings, of which Dr. Brackin, Dr. H. B. Brackin who has testified here in this proceeding was one of the doctors, and that their diagnosis of him was dementia praecox or schizophrenia; and that while in that institution he had ideas of reference, he had ideas that

Testimony of Dr. Leon L. Solomon

the people were against him and were referring to him; that he attended the church services afforded by that institution and that he had ideas that the preacher was preaching directly at him and of him; and that before his incarceration in that institution he had had similar ideas of reference; that people were speaking at him and of him and about him; and that the preacher of his own church, the Presbyterian minister, in his sermons was preaching directly to him and of him and that he quit the church and refused to go whereas formerly he had taken an active part in his church affairs; and that while he was in this Central State Hospital for the 11 months period he had ideas that his wife was going to bring him a gun and that he was going, on another occasion, to get a saw and saw his way out of there and, with the gun, manage to overpower the guard and in some way use that gun to effectuate his release; that he thought Dr. Brackin was against him; that he thought the other inmates were his inferiors, that they were dumbbells; and that he thought that he could get out of there; that he told Dr. Brackin and others that he had a job paying him \$200.00 a month waiting for him in Memphis when in fact there was no such job; that he told other doctors there that he had other jobs. Assuming that following this 11 months period there the criminal charges were filed away or nolle prossed against him which would have the effect or did have the effect that if his family had so desired, of releasing him from the criminal ward of that institution but that nevertheless after the filing away of those charges his father went before the Davidson County Court, a civil tribunal, a tribunal at that time before which criminal offenses ordinarily were not tried; that his father had an inquiry made into his sanity by the citizens of Davidson County, Tennessee; that his father made such an application and stated therein that he believed his son, Thomas H. Robinson Jr., to be insane; that on or about May 7, 1930, a jury of 12 men in the Davidson County Court was impaneled to inquire into the sanity of Thomas H. Robinson Jr., and that after hearing the evidence and being instructed upon the law, that jury, being

Testimony of Dr. Leon L. Solomon

the second jury constituted of 12 men, rendered a verdict or decision that Thomas H. Robinson Jr. was insane and a dangerous person to be at large upon society; that his father was then appointed to be his legal guardian and executed bond as such and his father, being desirous of having him placed where he would have some exercise and some light and where his condition might be corrected, had him placed in the Western State Hospital of Tennessee, which is an official institution located at Bolivar, Tennessee; that he stayed there some 12 weeks, and that his father then decided that he believed that he would have his son released from that institution; and that he did effect his release over the strenuous objection of Dr. Cocke, the superintendent of that institution; that his father as his legal guardian, releasing him, his son and this defendant, assumed all the responsibility to the institution for his release and that after his release the boy obtained various

positions, some of which he was unstable and unfitted for or quit for various reasons, or was discharged. Assuming that in 1931 he came to Louisville, Kentucky, and obtained a job through the assistance of his father with the Stoll Oil Company; that his father assisted his son, Thomas H. Robinson Jr., and took him to Mr. C. C. Stoll, of the Stoll Oil Company, an old acquaintance of Robinson Sr., and that Mr. C. C. Stoll had it arranged that his son would be placed as a filling station attendant at one of the Stoll filling stations, located at 2d and Broadway in Louisville, Kentucky; that his son, Thomas H. Robinson Jr., worked at that station as a station attendant for a period of six weeks and that he claimed to have become acquainted with Mrs. Alice Stoll but which fact is in dispute; that he voluntarily terminated his services with that company but that he stayed in Louisville, however, and obtained employment with an insurance company as a debit or route man; and that he became dissatisfied with that or rather it was unsatisfactory according to that position, and he severed his connection with that company following which he returned to Nashville, Tennessee; and that sometime prior to the year 1932 he became infected with syphilis; that he received treatment

Testimony of Dr. Leon L. Solomon

for that disease at the hands of a Dr. Gayden in Nashville, Tennessee, between May 28, 1932 and October 4, 1932; and that that treatment consisted of alternating courses of neo salvarsan intravenously and bismuth intramusculatory; and that he obtained employment at the Servel Company at Evansville for a period of one day, the period of which is in dispute it being claimed that it was 11 days; that he obtained employment at the Du Pont Company plant outside of Nashville and that his foreman was named John Ward; and that when he made application to this Du Pont Company he omitted answering a question correctly as to whether or not he had or not been insane and to that question he answered "no" or gave a negative answer; and that while there he became acquainted and associated with a young woman or probably two young women and that one of them that he had claimed to have loaned some money on a ring or a diamond and that she did not redeem it and that he later sold it to get back the money that he had claimed he had put into it but that is or will be in dispute; and that following that criminal charge was placed by this young woman against him and that he went to court and faced that young woman and proved by the records of the Du Pont Company that he was at work at the Du Pont Company on the time specified by this complaining witness and could not have done the acts charged by this person; that following that the Du Pont Company ascertained that he had falsely made an answer to the question of whether he had been insane and discharged him; and that he was not able to again obtain employment at that plant and that he

1591 did not do so; and that another young woman, an acquaintance of this first one, placed a charge against him of taking from her some \$8.00 and that the officers of the law came to his home and he sensed that they were going to take him upon what he thought or knew to be a false charge and that he jumped out the window and left home and went to Chicago; that later this charge of taking this \$8.00 was dropped against him; that he has never been convicted of a felony or even a misdemeanor for that matter; that while he was in Chicago he worked in

1592

Testimony of Dr. Leon L. Solomon

South Bend, Indiana, for a while as a janitor in an apartment there; also that he worked in Chicago; that during that time his life with his wife was hectic or stormy; that he rented an automobile from the Saunders U-Drive-It system in Chicago and was not able to furnish satisfactory financial reference and gave a fictitious or assumed name of John Ward, a name similar to or the same name of the foreman under whom he had worked at the Du Pont plant; and that he was able to sell Mr. Saunders, the owner and manager of this Saunders U-Drive-It system, of his financial ability; and that he obtained this Ford automobile, drove it to Indianapolis, Indiana, did not return it, kept it over its 18-hour period of time; rented an apartment in Indianapolis, Indiana; had his wife with him a part or most of the time there at Indianapolis; that he had previously purchased a typewriter in Louisville and that on that typewriter he had purchased in Louisville he wrote out a ransom note in words, figures and phrases to follow and before writing the ransom note, however, he had made an endeavor over a long period of time to obtain employment; that he had asked Mr. C. C. Stoll to reemploy him at the Stoll Oil Company in Louisville, and that Mr. Stoll refused to do so, stating, I believe, as a reason that it was their policy not to rehire persons who had voluntarily left their services; and that he at that time did or at some other time procure from Mr. C. C. Stoll a letter of recommendation which in itself was a very good letter of recommendation in which there was nothing to show that Mr. C. C. Stoll had any idea of persecuting this boy or any idea of keeping him from getting a job; that nevertheless in the attempt of Thomas H. Robinson Jr. to get various positions he was told or believed it in his mind that Mr. Stoll was blocking his efforts and that Mr. C. C. Stoll was always, in his mind, following him around to prevent him from getting a job and that preyed upon his already unstable mind and that he believed himself to be the reincarnation of Patrick Henry and that, without any idea of revenge, however, he was inspired to take action for the sake of his country and for the sake of the working man that it would be an act of patriotism to have

Testimony of Dr. Leon L. Solomon

1594 Stoll part with part of his money; that this idea grew and grew in this defendant's mind until it became an obsession with him; and that he then prepared a ransom note in this apartment as I have stated before in words, figures and phrases as follows:.

The Court (Interrupting) Now, gentlemen, it is going to take some 15 minutes to read that ransom note, I expect, and this is probably a good time to suspend and we can take that up after lunch.

Mr. Brown: Since the jury has heard it two or three times, why not let it be submitted to the doctors and let it be considered as read into the record?

The Court: Dr. Solomon and Dr. Crice, you both, I expect, have read the ransom note?

Dr. Solomon: I have.

Dr. Crice: I have.

The Court: Then the ransom note can be considered as read. Both of the witnesses have read it and the jury has heard it and there is no use to repeat it again. You will take into consideration in this question the language and words of this ransom note.

Mr. Hogan: Now do you want me to go ahead?

The Court: Yes, I think that you can finish shortly if you leave out reading the ransom note.

Q. Assuming, further, that following the preparation of this ransom note by this defendant, he drove in
1595 this automobile that he had obtained in Chicago to Louisville, Kentucky, with the idea of carrying out his ideas as to Mr. C. C. Stoll, as heretofore stated; that he got here sometime during October 8, 1934 and that sometime during that day he went to the home of C. C. Stoll here in Louisville with the idea of carrying out his own ideas as to what should be done with C. C. Stoll and in order to gain admittance to the C. C. Stoll home he assumed the guise or role of a telephone representative or repairman, and that he was met at the C. C. Stoll home by the maid and admitted; that he made a pretense of examining the telephone for trouble; that he did not see in that house C. C. Stoll or Mrs. C. C. Stoll and left without any incidents happening other than that just mentioned;

Testimony of Dr. Leon L. Solomon

that he went to the home of Mr. George Stoll, a son of Mr. C. C. Stoll, and that he was met at the door by the nine-year-old daughter of Mr. George Stoll and Mrs. Stoll of that household; and that he assumed the same role of telephone repairman and went upstairs and presumed to examine the phone in that residence for trouble but left without any untoward incident happening there; that he did not there see Mr. C. C. Stoll; that he stayed in Louisville and was here in Louisville on October 10, 1934 and decided that he would go out to the home of Berry Stoll, he having previously worked for Berry Stoll or for

1596 a company with which Berry Stoll had some connection as an officer; and that he did not recall or understand then how to get to the Berry Stoll home on the

Line Kiln Road in Jefferson County and stopped at a garage operated by a Mr. Kottke on Bardstown Road in Louisville, and made inquiry as to directions and there he received directions as to how to get to the Berry V. Stoll home; that he went to the Berry V. Stoll home; and that he was met by the maid and that he was there some hour and a half; that he then pretended to be a telephone repairman and pretended to be examining the telephones; that he made certain inquiry there as to who was in the house or about the premises and that he inquired about an extension phone and that he was told by the maid that it was in the bed room of Mrs. Alice Stoll; that the maid then inquired of Mrs. Alice Stoll whether or not this supposed telephone repairman might investigate and check the phone in her bedroom and that she consented to move from her own bed room to the guest room, crossing the hall, and that she did that; and assuming that Mrs. Alice Stoll heard the voice of this presumed telephone man on the first floor of the Stoll residence and that this defendant went upstairs under the pretense of examining the extension phone in Mrs. Alice Stoll's bed room but instead he went into the guest room, either immediately ac-

1597 companied by the maid or sometime thereafter or preceded by the maid; that fact is somewhat in dispute; and that there he came face to face with Mrs. Alice Stoll and she said, "What are you doing here?" to which

Testimony of Dr. Leon L. Solomon

this defendant responded, "I am here to kidnap you" or "I am going to kidnap you," to which there was response on the part of Mrs. Alice Stoll that "I will give you a check" or "I will write you a check," to which the defendant responded that he did not want or would accept the check; and that upon being advised that Mr. Berry Stoll was about due, that he made some statement that he would kill Berry Stoll, but that is in direct dispute; and that Mrs. Stoll, after she claimed she knew he was going to carry out his intentions, was agreeable to accompany this defendant instead of her husband, which is also in dispute; and that he and Mrs. Alice Stoll talked or got into an argument and that it is claimed he then took from his pocket a lead pipe and hit Mrs. Stoll over the head with it which did not draw any blood at that time, and that is likewise in dispute; that he pretended to trust Mrs. Stoll and laid his gun upon some furniture there, but that is in dispute and the fact of his even having a gun is in dispute on that particular occasion at that time; that Mrs. Stoll made a grab for this gun, or the gun that it is claimed was present on this occasion; and that this defendant hit her for the second time over the head with this lead pipe and that that caused blood to flow and that she sat upon the bed and two pools of blood from the wound, or claimed wound, in the head was present but those facts about the hitting on the head and the blood are very much in dispute; and that the maid was trussed up and bound feet and hands and probably gagged; and that Mrs. Stoll was gagged, which is also in dispute, but that her feet were not immediately bound; that Mrs. Alice Stoll then accompanied the defendant from that guest room down the stairs and out into this automobile that this defendant had obtained in Chicago; and that before leaving he had thrown this ransom note, which was then in an envelope, either upon the bed or on the floor; and that he immediately left with Mrs. Stoll and took her to this apartment in Indianapolis, Indiana, where she either stayed or was held captive, which is a very much disputed question; and that she was held captive or could have escaped, which is also in dispute; and that certain letters were written in the

Testimony of Dr. Leon L. Solomon

handwriting of Mrs. Stoll but which were claimed to be at the direction of the defendant to Mr. Berry V. Stoll, her husband, and to Mrs. Douglas Potter, then a Miss Elizabeth McHenry, and another letter addressed to "Dear Mr. Intermediary," the intermediary having reference

1599 to the defendant's own father T. H. Robinson, Nashville, Tennessee, whom this defendant had designated in the ransom note as the intermediary, his own father. And assuming that a sum of money was delivered by his wife to that apartment in Indianapolis on October 16, 1934, and that some of that money, the amount of which is in dispute, was left there by the defendant; that he left the apartment and left his wife and Mrs. Stoll there together; and that he went about the country over a period of some 18 or 19 months without being disguised or in any manner attempting to disguise himself and that despite the fact that it is claimed the FBI forces were on the lookout for him, and despite the fact that he went openly about crowds, at one time to the polo grounds at which place there was a baseball contest on between two baseball teams and that there were stationed in there, either as spectators or on duty, many of the police force of New York or the borough of Manhattan, New York, whichever that polo ground is located in; and that he then associated himself at nightclubs openly without attempt to disguise, the best nightclubs at which he might have been expected to patronize with a large sum of money; that nevertheless he was not apprehended by the FBI Forces or other law enforcement authorities; that in New York or Brooklyn he registered under assumed names; and that other

1600 than using an assumed or fictitious name he did not resort to disguise; that he bought a Plymouth automobile from some dealer in or about New York; that he did on or about New Year's eve of December 1934 at a New Year's eve party became acquainted with a young woman by the name of Jean Breese and that he and this Jean Breese later lived in hotels under assumed names as man and wife; that they went across the country once or probably twice and back and there stayed in the very best hotels under an assumed name without at any time ever

Testimony of Dr. Leon L. Solomon

being picked up by the FBI officers or at any time attempting to disguise himself other than the assuming of the name; that he rented a rather expensive dwelling after having been taken about by a very pleasant sort of real estate woman who said that he was 100% so far as she was concerned, and that he swept her off of her feet; and that on May 11, 1936 Jean Breese made arrangements to meet the FBI Agents in Los Angeles and did meet them on that occasion; and that she told them of his whereabouts or, rather told them that if they would give her an assurance that she was not followed she would phone them at a designated hour of 4 p. m. and divulge to them his whereabouts; that she did that, and that the FBI Agents went to this Glendale home, 20 miles away from the office of the FBI, to which there was attached some 20 agents,

1601 assigned there; and that they knocked on the door, or at least one of them did, and that they there captured this defendant; and that he then had certain firearms and ammunition that could have been used for these firearms; that he was brought to Louisville by airplane by the FBI Agents, reaching here sometime May 12, 1936; that he was then taken to the Starks Building and put in the holdover of the FBI in that building; that he was constantly questioned from the time of his capture in California all during his airplane trip and during his incarceration in the Starks Building holdover; that he was not allowed to sleep or permitted to sleep but that he was fired with questions; that he was not permitted to have advice of counsel or an attorney, and did not have such advice; that he had never been restored to sanity; that he was brought into this court late in the afternoon of May 13, 1936, sometime before six p. m.; that his mother was hysterical and plead with him to plead guilty; that his father was intoxicated or had been drinking heavily and was in no condition to render him advice; and that he was not represented by counsel, and that he was brought into this court, not before His Honor, Judge Miller, but into this court and was asked how he pleaded and he uttered one word and that word was "Guilty," following which he was taken away; but prior to that time, however, he was

Testimony of Dr. Leon L. Solomon

1602 chained, that he was shackled and also handcuffed and heavily guarded; that he was then taken to Atlanta and placed in the penitentiary and later transferred to Leavenworth, likewise a Federal Penitentiary; and that he was then removed to Alcatraz Island, likewise a Federal Prison but termed sometimes as the torture chamber of America; that he then was there for sometime under strict discipline and that he made application for a writ of habeas corpus to the District Court of California but that was not successful; that he appealed to the Circuit Court of Appeals and was not successful; that he later went to the Supreme Court of the United States and was successful; that he was then given a hearing upon his application for a writ of habeas corpus and that after the facts were presented the Federal Court of California decided that he should be given a chance to have an attorney or, rather, decided that he was not represented by an attorney; and that that was in violation of his constitutional right and that he had been formerly adjudicated insane without having been restored to sanity legally; and that he should be given an opportunity to come into court, and be represented by counsel, and make a plea either by himself or with counsel as to whether or not he desired to plead guilty or not guilty. Assuming that he did come back here and entered a plea of not guilty and was placed upon trial and is upon trial for his life and liberty at this time. Now, with that assumption of facts I will ask you whether,

1603 in your opinion, this defendant on October 10, 1934, and before that time and after that time, some three years after that time, some six years after that time, was suffering from such a perverted and deranged condition of his mental faculties as rendered him incapable of distinguishing between right and wrong; or that he was unconscious at such times of the nature of the acts charged in the indictment while committing the same; or where, though conscious of them and able to distinguish between right and wrong and know the acts were wrong, yet his will, the governing power of his mind, was otherwise than voluntary, was completely destroyed; that his action was not subject to it but beyond his control?

Testimony of Dr. Leon L. Solomon

The Court: Now which one are you addressing your question to?

Mr. Hogan: Both of them, and I think maybe one ought to leave the court room while the other one answers.

The Court: Unless you want them to answer in turn.

Mr. Brown: They can answer in turn.

The Court: All right. Dr. Crice was on the stand first.

A. (By Dr. Crice) If I am able to speak of a 1604 hypothesis?

Q. Yes.

A. The defendant I am assuming suffered with a severe accident in his early youth—

Mr. Brown (Interrupting): Let's get the answer first.

The Court: Let's do not repeat the facts. You have heard them all given to you as assumed. On the basis of those facts, if they are assumed to be so, you may answer Mr. Hogan's question.

A. On a hypothesis I would say that the defendant had a background—

Mr. Brown (Interrupting): Your Honor, I don't believe that is responsive to the question.

Q. Did he know right from wrong at the time?

A. I am not supposed to discuss the question. I would say no, he did not.

Q. Did he have a control over his willpower, the governing power of his mind, to prevent him from doing the things which he is charged in this indictment with doing?

A. No, he did not.

Mr. Hogan: Now, do you want me to ask the other doctor before you cross-examine this witness?

Mr. Brown: Yes, that is quite all right.

1605 Q. Dr. Solomon, will you answer my hypothetical question?

A. It is my opinion that this man did not know right from wrong. It is my opinion that he did not have sufficient willpower to govern him in his ability to distinguish between right and wrong.

Q. Could he resist from doing the things that he is charged with doing in this indictment?

Testimony of Mrs. Ann Woollet

A. Assuming that many parts of this hypothesis that constitutes these hypotheses are correct, he had no ability to distinguish between right and wrong, and no ability to resist his impulses to accomplish his act.

Mr. Hogan: That is all.

The Court: The cross-examination may be continued after lunch. I expect we had better delay the afternoon session in order to give the jury plenty of time to eat lightly but not hurriedly before they come back.

We will reconvene at 2:30 p. m.

After recess the following proceedings were had:

In the judge's chambers out of the presence and out of the hearing of the jury:

The Court: Let the record show that these
1606 questions are addressed to Mrs. Ann Woollet, one of the witnesses for the government in this case, in the chambers of the Court and in the presence of Mr. Eli Brown, District Attorney, and Mr. Robert Hogan, counsel for the defendant, outside of the presence of the jury.

MRS. ANN WOOLET was examined and testified as follows:

Direct Examination by the Court.

Q. Mrs. Woollet, you previously testified in this case for the government?

A. That is right.

Q. Last week, I believe?

A. That is right.

Q. At which time certain questions were asked you by Mr. Hogan as to certain steps which you may have taken or may not have taken about seeing a lawyer respecting any claim which you thought you might have had against the Stolls. Since then Mr. Hogan has shown in evidence here in my chambers certain statements of Mr. Joseph M. Hayse who states that at one time you did come to his office with your husband to see him, and that on another day, at night, you came to his residence on Confederate

Testimony of Mrs. Ann Woollet

1607 Place in Louisville, Kentucky, where you made a statement which was taken down by his wife and which you later signed and swore to. From the evidence which I heard the other day, both from Mr. Hayse and your husband with respect to these visits to Mr. Hayse's, I was of the opinion that the matter was one between a lawyer and a client and that, under the rule which makes such communications and such conversations privileged, you would be entitled, if you so desired, not to have divulged or told what you might have said to Mr. Hayse on any of those occasions. However, in order for Mr. Hayse not to divulge them, it would be necessary for you to indicate that you wanted to exercise that privilege and not have them told.

A. I certainly do not want them told.

Q. Or you can waive that privilege.

A. No. He took that as between client and attorney and I feel that that is something between us, and it has no bearing on this case and I do not want it brought out.

Cross-examination by Mr. Hogan.

Q. The other day you were asked the question if you had ever consulted Mr. Hayse or any other attorney about a claim?

A. That's right.

1608 Q. Were you mistaken then?

A. I didn't consult an attorney. That name didn't mean a thing to me. I have never been in his office.

Q. Did you consult Mr. Hayse in his office or not, Mrs. Woollet?

A. I consulted Mr. Hayse, but I was merely in his home.

Q. Then you knew he was a lawyer?

A. Certainly.

Q. Then you made an incorrect answer when you said you did not consult an attorney?

A. I didn't consult him. I merely went there and made a statement.

Q. You said the other day that you had not given a statement?

Testimony of Mrs. Ann Woollet

A. You said in an office and when you started out that didn't mean a thing to me.

Q. Have you ever been in Mr. Hayse's office?

A. No. I have never been in any lawyer's office in my life except on this case. I have had no occasion to.

Q. Now let's see about that. Do you know where the Republic Building is?

A. Not right offhand.

Q. It is on Fifth and Walnut, across the street
1609 from the Kentucky Hotel. Did you go to his office there?

A. I have never been up there.

Q. Then if you have never been in his office, you have never consulted him about any claim or made a statement there did you?

A. I did not.

Q. Then he was never at any time your attorney?

A. No, I wouldn't say so. I merely went to his home and gave a statement—that was every bit of it.

Q. Now, confining it to your being at his office. You did not employ him as an attorney?

A. No.

Q. You did not consult him as an attorney about this Stoll kidnapping case or anything else whatsoever?

A. No.

Q. In other words, so far as you and Joe Hayse are concerned, there has never existed between you and him the relationship of attorney and client?

A. No.

Mr. Hogan: If Your Honor please, there it is right there.

The Court: This witness is a lay person. She does not understand the meaning of lawyer and client. Did you go there with your husband?

1610 Witness: To his home.

The Court: With your husband?

Witness: That's right.

The Court: And your husband was trying to get advice in a claim against the Stolls?

Witness: That is right.

Testimony of Mrs. Ann Woollet

The Court: And any claim that you might have along with him?

Witness: That is right. He merely wanted a job.

The Court: Mr. Hayse stated this morning when he testified that they came there to consult him. I don't think this witness understands what you mean as to lawyer and client. It was Mr. Hayse's own statement that they came there to consult him about a claim against the Stolls.

Cross-examination Continued by Mr. Hogan.

Q. Did you contend at any time that you had been falsely imprisoned in the Speed home?

A. No.

Q. Did your husband, so far as you know, have that idea?

1611 A. I don't know what his ideas were.

Q. Well you did sign this statement that was produced here in court this morning?

A. I don't know that I did.

Mr. Brown: Why don't you show it to her and let her see whether or not she signed it.

A. I don't remember ever signing a statement.

Q. Now suppose you look at that statement and answer the question? (Handing statement to the witness.)

A. (After looking at signature) That is my handwriting.

The Court: Did you show her that on her direct examination?

Mr. Hogan: No, I didn't. I think I should be permitted to do that now because on page 643 she denied making the statement to anybody that Mrs. Stoll put her arms around her.

The Court: Well you have proved it already by Mr. and Mrs. Hayse, both.

Q. Do you deny making this statement?

A. I know I was in her home and gave a statement but I didn't know—

Q. (Interrupting) You remember signing something?

A. I do not remember signing anything but
1612 that is my signature.

Testimony of Mrs. Ann Woollet

Q. Well you don't put your handwriting or signature on anything if you don't know what it is, do you?

A. I suppose not.

Q. Then that recalls to you that you signed this statement?

A. I signed that, yes.

Q. In the court room the other day did you deny that you signed any statement?

A. I still don't remember it. I just see my handwriting there.

Q. Well, does that refresh your recollection?

A. No it doesn't.

Q. Or do you just don't want your recollection refreshed?

Mr. Brown: Now I am going to object to that.

A. I am not being tried in this case.

The Court: She says it is her handwriting. That is contradiction if that is what you are trying to prove here.

Mr. Hogan: That is what I am trying to prove.

Witness: I still don't remember signing it.

Mr. Hogan: I think I ought to be able to put her on and ask her if she didn't sign this or remember signing this.

1613 Mr. Brown: I will object to putting anybody else back on the stand.

Mr. Hogan: You have just brought her back.

Mr. Brown: I did not. The Court asked her to come down here.

The Court: I asked her to come down.

Mr. Brown: You have proved everything you want to prove.

The Court: What do you want to prove?

Mr. Hogan: That she signed this statement.

The Court: Well you may state to the jury that she signed it; that she would make the statement that she recognized her handwriting on the exhibit but has no independent recollection of having signed it. Is that right?

Witness: That's true. I have scratched my brain and I just can't remember signing it.

Mr. Brown: All right, Mrs. Woollet, you may be ex-

Testimony of Dr. Leon L. Solomon

cused.

The following proceedings were had in the presence and hearing of the jury:

The Court: Members of the Jury, this morning some testimony was introduced to you by Mr. and Mrs. Hayse relative to some statements which they claim were made orally in Mr. Hayse's office and later reduced to writing in Mr. Hayse's home by Ann Woolet, one of the witnesses who testified for the government here last week.

At the time when Mrs. Woolet testified she was asked by defense counsel whether she had made such statements and she answered either that she had not made them or did not recall making them or something to that effect.

However, at a conference which has just been held in my office with counsel for both sides present and with Mrs. Woolet present, the written exhibit which Mr. Hogan offered in evidence this morning, I believe, or at least identified, was shown to Mrs. Woolet and her signature thereon shown to her and she recognized it as her signature but Mrs. Woolet stating at the same time that she had no independent recollection of having signed it.

By agreement that statement is made to the members of the jury of that fact.

DR. LEON L. SOLOMON, was called to the stand and was examined further as follows:

Cross-examination by Mr. Brown.

Q. Dr. Solomon, you stated that you examined this defendant in October and again in November of this year, I believe?

A. Yes, sir.

Q. And upon the date of your first examination you found him in excellent physical condition?

A. Yes, sir.

Q. With reference to his mental condition, did you find him in good mental condition?

Testimony of Dr. Leon L. Solomon

A. He was wholly sound and in excellent mental condition when I examined him.

Q. Now, you stated that at some short time later you found him to be suffering from an active case of tuberculosis. Do I paraphrase your words exactly?

A. In the sense of active meaning acute tuberculosis, it is not acute today, but it was gradually making its appearance as an active tuberculosis and becoming more active as days have gone by.

Q. Now what you mean was, it wasn't an active case but it was more active than the first time you saw it?

A. He had no evidence whatsoever of tuberculosis when I first saw him.

Q. I thought you said that you could discover by some method old tissue scars?

A. Yes, he had had tuberculosis. It was what
1616 we call healed tuberculosis.

Q. You did discover the presence of old scars. Is that right?

A. He had unquestioned evidence of healed tuberculosis.

Q. Now then when you saw him the first time you saw him, when the defendant first returned from the torture chamber of America, and I am using his own words, you found him in excellent physical and mental condition?

A. Yes, sir.

Q. And since that time you have caused some test to be made upon this defendant which, in your opinion, you now find to be leading toward an active case of tuberculosis?

A. Well, I have caused no test to be made on him that would lead to such an opinion. I have made those tests myself—physical, wholly physical.

Q. Well now what did they consist of?

A. What we call auscultation. That is—

Q. (Interrupting) All right. Now what does that consist of?

A. Physical signs of tuberculosis.

Q. All right. Now don't go so fast. Auscultation. You said you made certain auscultatory tests?

Testimony of Dr. Leon L. Solomon

A. Yes.

1617 Q. All right. What is that? What kind of a test is that?

A. You either lay your ear directly on the chest or you use a stethoscope, an instrument, and attached it to your ears and listen to his breath sounds.

Q. What did you do?

A. Well nowadays we rarely lay our ear on the chest. I used my stethoscope, which—

Q. (Interrupting) Well I have seen a stethoscope so you don't have to tell me about it. You used a stethoscope by placing it to his chest?

A. Placing this stethoscope to his chest, and to my ears.

Q. All right. Now what else did you do?

A. I used the percussion evidence.

Q. All right?

A. I listened to his voice sounds.

Q. With your ears, you mean?

A. With my ears—I had him speak and I had him cough.

Q. All right. What else did you do?

A. I laid my hands on his chest and got what we call firmities, the movement of his chest. And there is evidence of consolidation.

Q. All right. What else did you do?

1618 A. I determined that he has a beginning cavity in his lung—

Q. (Interrupting) Don't tell me what he has—just what you see.

A. That is obtained through auscultation.

Q. Well now, you have already talked about auscultation.

A. No, I was auscultating his breath sounds, and now I am auscultating to see what happens when he talks, and when he breathes, and when he coughs.

Q. What else did you do, Doctor?

A. That is all that is necessary.

Q. Well it isn't a question of being necessary but I asked you what else did you do?

Testimony of Dr. Leon L. Solomon

A. That's all.

Q. No sputum test?

A. He has almost no sputum. He coughed and he—

Q. (Interrupting) Just answer my question. I said, did you or did you not make a sputum test?

A. There is no sputum to be had—practically none.

The Court: Now, just a minute. You can answer that question yes or no, and then give your explanation.

Mr. Brown wants a yes or no answer. Did you make
1619 a sputum test?

Witness: I made no sputum test.

Q. All right. Now you can explain why you did not make a sputum test?

A. Because there is no sputum. It is a dry cough and unproductive and produces no sputum.

Q. Did you do anything else?

A. No.

Q. That's all you did?

A. That's all I did.

Q. Now then suppose you had a heavy cold, Doctor, and you did those same things, what would you find out?

A. You would get evidence of a bronchial cough, wholly different from the auditory signs in the percussion method where there is consolidation.

Q. Suppose you didn't have any cough?

A. Had no cough?

Q. Suppose you just had a cold without a cough—that is, a chest cold without a cough?

A. You can't very well have a chest cold—

Q. (Interrupting) Well, whether you can or not, just suppose, if it is medically possible?

A. It is not medically possible to have a chest cold without a cough.

1620 Q. Not medically possible—

A. (Interrupting) No.

Q. (Continuing) To have a chest cold without a cough?

A. No. It is not possible to have a chest cold without a cough.

Q. Now, Doctor, are you a tuberculosis expert? Have you specialized in tuberculosis?

Testimony of Dr. Leon L. Solomon

A. Well, for fifty years I have listened to people's chests, and I consider myself sufficiently expert—I dislike the use of the word. I consider myself sufficiently familiar with sounds of the chest to constitute myself as an expert in a pulmonary condition, whether it be tubercular or bronchial or pneumonic or pleuritic, or whatever it may be.

Q. Or syphilitic?

A. A syphilitic tumor of the chest would give you the evidence of some consolidation; then you would verify that by an x-ray.

Q. Now, Doctor, have there been any advances in medical science in the last ten years?

A. Oh, I think there is an advance of practically—

Q. (Interrupting) Every day?

1621 A. Well, maybe not every day.

Q. Most days?

The Court: Every year?

A. At least every year.

Q. Now, have you ever made a diagnosis of active tuberculosis without clinical readings, without a sputum test—

A. (Interrupting) I beg your pardon, but I didn't get the first one.

Q. Without clinical readings—that is, thermometer readings, without a sputum test, or without an x-ray?

A. Mr. District Attorney, I had my education before they had any x-rays—before there was an x-ray.

Q. All right, you can answer that question yes or no and then you can tell me about your education.

A. I have distinctly made such a diagnosis, and every doctor has who was born 50 years ago.

Q. In the last ten years have you made a diagnosis of active tuberculosis where you have taken no thermometer readings—

A. (Interrupting) I beg your pardon, I repeatedly referred this morning and said to you that there were thermometer readings; that he had a sub-normal—

Q. (Interrupting) That's what I asked—

1622 A. (Continuing) That he had a sub-normal

Testimony of Dr. Leon L. Solomon

temperature in the morning and an afternoon rise in temperature.

Q. That is what I asked you if you had done, and you told me you had not—you told me four things you had done and mentioned nothing else. Now, did you take a thermometer reading?

A. I so stated this morning, that he had a temperature of over 100—

Q. (Interrupting) I am not talking about this morning. I am talking about now. Did you take a thermometer reading?

A. I did, sir.

Q. Have you the thermometer readings with you?

A. Yes.

Q. Are they there?

A. In this record.

Q. Where are the thermometer readings?

A. They are in my office.

Q. Can you call your secretary and have a chart sent over here showing the daily temperature of this man?

A. I couldn't possibly call her on Thursday. She is out of her office on Thursday.

Q. Out of her office?

A. From twelve o'clock noon. But I tell you
1623 that he had a 100 and more in the afternoon, and below normal in the morning.

Q. When did you first examine him?

A. I would say about three weeks ago, and discovered that.

Q. That would be about November 15th?

A. It was the day before I went to Nashville, and that was the 14th day of November.

Q. Then it was the 13th?

A. Yes.

Q. All right, what was his morning temperature on the 13th?

A. It was sub-normal.

Q. In the afternoon?

A. It was over 100—his late afternoon temperature; it was in excess of 100.

Testimony of Dr. Leon L. Solomon

Q. Did you prepare the chart yourself? Did you keep the chart?

A. They are all dictated by my young lady secretary—sometimes over the telephone and sometimes in the office.

Q. Well in this case, you were over at the jail when you examined the defendant?

A. They were given to her when I got back from the jail.

1624 Q. Now, each day from November 13th until what day did you take those thermometer readings?

A. I think I last saw this gentleman on Sunday—this past Sunday, at about 5 o'clock in the afternoon.

Q. And so your thermometer readings extend from November 13, 1943, to December 5, 1943?

A. If that was Sunday.

Q. You had no x-ray made?

A. I undertook to have one and couldn't have it made.

Q. You had no x-ray?

A. There was no x-ray made.

Q. Did you contact the Dick X-ray Company to have an x-ray taken to the jail?

A. I went to Dr. Fugate's office and was told that he had the best x-ray equipment in the—that might be transported; and Dr. Fugate said to me, "My x-ray is not sufficient and if I plug it in to the wires at the jail I haven't sufficient wattage to get any soft structures."

Q. Did you go to the Dick X-ray Company to get an x-ray to be transported to the jail?

A. No.

Q. You did not?

A. No.

Q. You know the Dick X-ray people here in **1625** Louisville?

A. Intimately well.

Q. Now, Doctor, in your answer to the hypothetical question this morning, you assumed facts to be true—am I correct about that? In answer to the hypothetical question?

A. Yes, sir, assuming those facts to be true.

Q. All right. Now did you assume that Mrs. Stoll was

Testimony of Dr. Leon L. Solomon

kidnapped or did you assume that she went voluntarily?

A. I assumed both, that she was kidnapped and that she voluntarily went.

Q. Did you assume that she was hit over the head or that she was not hit over the head?

A. I assumed that she was hit over the head because she had—so I was told—

Q. (Interrupting) Now it is not what you were told.

A. I assumed that she had.

Q. Been hit over the head?

A. I assumed that she had.

Q. By this defendant?

A. I presume by this defendant.

Q. I am not presuming. I am asking you?

1626 A. Well—

Q. (Interrupting) I am asking you to presume. Did you presume that she was hit over the head by this defendant?

A. I couldn't assume that. I could only assume that she had an injury on the back of her head and on the forehead.

Q. Well, Doctor, you were examining this defendant, or answering the hypothetical question to testify about this defendant, were you not?

A. I will assume, if you desire me to, that she was hit over the head by this defendant.

Q. But you said you didn't assume that?

A. Well, she was and she was not—she had an injury.

Q. You mean you can assume that the facts are true, and you can assume that the facts are not true, and you can assume that the facts may be true, and your answer would be the same?

A. As regards this man.

Q. That is, you can assume that the facts are true, and you can assume that the facts may be true, and you can assume that the facts are not true, and the answer regarding this defendant would be the same?

1627 A. With respect to that question, I think they are not material as to whether he hit her or not.

Q. Now, you have testified at some length about this

Testimony of Dr. Leon L. Solomon

so-called forced marriage. You say you gained knowledge of that?

A. Of the what marriage?

Q. Of the forced marriage? In 1927?

A. Forced marriage. Yes.

Q. Did you learn the facts surrounding that marriage?

A. Well as they were outlined to me by the defendant himself and by his mother and by an attorney who represented the defendant, by the—

Q. (Interrupting) Who was the attorney?

A. Mr. Ross, as I understand.

Q. Monte Ross. All right, go ahead.

A. By the records which were available at the Lakeland Asylum.

Q. Lakeland Asylum?

A. No, the Central Asylum, they call it. And by the affidavit of the physicians who refer to it.

Q. Did you examine the court records?

A. You mean did I go to court?

Q. Did you examine the court records?

1628 A. No I did not—I was there on a Sunday; Saturday night and Sunday.

Q. Have you had displayed to you by Mr. Monte Ross, or by Mr. Hogan, a certified copy of the court records pertaining to this forced marriage?

A. Yes.

Q. You have seen that?

A. Yes.

Q. Let's see if our records agree. Will you examine that and see if that is the court record (handing record to the witness.)

A. Yes.

Q. Now doctor, did you assume it was his child or it was not his child?

A. I beg your pardon—it was or was not what?

Q. This defendant's child as a result, or born after that marriage?

A. I didn't get one word in your question. Will you repeat it?

Q. Did you assume that it was the child of this defend-

Testimony of Dr. Leon L. Solomon

ant and his wife or that it was not his child?

A. You are speaking of the forced marriage?

Q. Yes?

A. I assumed this was not his child.

Q. And you assumed that she was a chaste
1629 woman or was not a chaste woman?

A. I assumed that she was a promiscuous woman who had had illicit intercourse with a number of men.

Q. Did you assume that this defendant was not allowed to consult with his father or with his attorney before he went through with the marriage ceremony, or did you assume that he went through with the marriage ceremony voluntarily?

A. I understood it was a shotgun marriage.

Q. And your information was obtained from this defendant, from members of his family, and from Mr. Monte Ross, plus certain information on the records of the Central State Hospital which likewise was obtained from this defendant, from members of his family or from his attorney?

A. Plus information that was obtained from two of his boyhood friends and from Dr. Gayden—I say, I think, seven or eight people on Sunday.

Q. Now, Doctor, you have had occasion to examine many people or few people who have been convicted of crime or who are awaiting trial on charges of crime?

A. I have not examined a great many people who have been guilty of crime or who were awaiting charges—rather few.

Q. May I ask you if you know what I mean by the phrase “modus operandi”—

1630 A. Yes I know what that means.

Q. I will ask you if in criminology, modus operandi isn't the science of detecting the perpetrator of a crime by studying the methods that that man has used before in committing prior crimes?

A. Well I don't know that I am so familiar with the legal side of it as to answer that question, but the words “modus operandi,” I understand, is as you have stated, the methods that are pursued.

Testimony of Dr. Leon L. Solomon

Q. Now, let's examine this record. I believe you have seen this record before, you say?

A. I presume I have.

Q. Suppose you look it over and tell us whether or not you have before I ask you about it (handing the record to the witness).

A. It looks like the same piece of paper—I mean a piece of paper that was a facsimile of what we are now referring to.

Q. Several pieces² of paper, isn't it?

A. The same piece of paper—by "piece" I mean—I am using the word "piece" in the plural.

Q. Now, Doctor—now, up to this point, Doctor, there has been omitted from the record all mention of the young woman involved in this 1927 marriage. The defendant has observed that and I have observed that, and I will ask you that so far as I am concerned you will continue to omit the reference to this young woman's name.

A. I have never used it and I will not use it; out of respect to the woman I would not use her name.

Q. Now, I will refer you to the complaint and ask you to examine certain parts of it that I refer you to, and refer you to this part at that point—

“At the time he was so arrested under said false and fraudulent charge, he was not given an opportunity to consult with his father or counsel—

Mr. Hogan (Interrupting): Now if he is going to pick out parts of the record I reserve the right to pick out certain parts of it.

The Court: Oh yes. You may show the Doctor the whole record if you want to. I understand he has read it all anyhow.

Witness: Yes.

Q. (Reading) “That the defendant furnished the money to purchase said marriage license for their marriage, and he was then carried to the office of J. R. Allen, a Justice of the Peace in Nashville, Tennessee,

Testimony of Dr. Leon L. Solomon

1632 on Deaderick Street, where the purported marriage ceremony was held.

"Complainant believed the statements of the said defendant and her mother and aunt to be true and relied thereon. He believed from their statements that the said defendant was a virtuous woman and that the child to be born to her was his child, and that it would not be born for about two months from the date of said ceremony.

"At the time of said ceremony he was a student in Vanderbilt University and had no independent means or income, and was not then able to take care of a wife and child. On account of the fact that said unborn child, if his, was conceived before said ceremony, he hesitated to tell his father and mother of his purported marriage, and the circumstances, thereof, at that time. After the marriage ceremony said defendant went to her home to live and he went to the home of his parents to live.

1633 "One week after said ceremony, while the young woman and the said Robinson were living separate, as aforesaid, said child was born. Robinson was very much surprised and shocked to learn of its early birth, and started an investigation to find out when said child was conceived. He found that said child was a full nine months child. He then discovered that said child, according to medical authorities, was conceived on or around April 19, 1926. The young woman did not have sexual intercourse with the said Robinson on or anywhere near said date. On further investigation he found that around that date said young woman had sexual relations with several different men other than Robinson. From the facts developed and what he already knew, that is, the date of the birth of the child and his relations with the young woman, Robinson was forced to the conclusion that the child did not belong to him, and that a gross fraud had been practiced upon him by said young woman and her mother and aunt in her presence.

"Robinson therefore charges that his consent to

Testimony of Dr. Leon L. Solomon

said marriage was secured and obtained by such fraud as renders said marriage fraudulent and void from the beginning; and he is advised he is entitled to avoid and annul it in this court in this proceeding."

1634 Then there is an amended and supplemental bill, in which he prays,

"For the annulment of his marriage to the young woman on the grounds of fraud—and, in the alternate prays for divorce on the ground that the young woman was pregnant with child by another person at the time of their marriage by another person without his knowledge."

Now he also goes on to say,

"Now in addition to the charges and allegations made in his original complaint, Robinson charges that shortly after said marriage, and in the month of February 1927, the said young woman called, or had called, to her home a committee from the Ku Klux Klan, for the purpose of discussing with said committee certain charges she had to make against Robinson.

"Upon said committee calling at her home, she falsely and fraudulently told said committee that Robinson had, in April 1926, come to her home in Nashville, Tennessee, and asked her to go automobile riding with him; that after he had gotten her into the car with him for the purpose of taking her for a ride, he drove her to a drug store where he purchased certain 'knock out' drugs or drops which Robinson, unknown to her, put into a harmless drink and gave her for the purpose of rendering her unconscious; that after Robinson had so give her said 'knock out' drugs or drops and thereby rendered her unconscious, he thereupon forcibly and against her will had sexual intercourse with her, and committed rape upon her body."

Testimony of Dr. Leon L. Solomon

Then it goes on to say:

"Said charges made against the complainant to said committee are absolutely false and groundless, and known to have been groundless and false by the young woman when she made them."

Then it is signed Thomas H. Robinson Jr., and sworn to. Now we get to the answer of the young woman.

"The young woman denies that the facts in this case justify the complainant to use her name in a double aspect, and states in fact that her name is and should be Mrs. Thomas H. Robinson Jr. because of the ceremony which was had with the consent of the young woman and Robinson. That the marriage ceremony was in good faith, the parties thereto assenting—

1636 A. (Interrupting) Pardon me, she admitted something but she made this denial?

Q. Let's see what is is. (Continuing reading:)

"The defendant admits the first paragraph of Section one of the bill, with the exception that she denies—

A. (Interrupting) My recollection is that she admitted part of it.

Q. She admitted her name and where she lived, didn't she, Doctor?

A. As I read through it she made other admissions which the Court passed upon when it annulled the marriage.

Q. You were under the impression that the marriage was annulled?

A. Nolle processed, whatever that means under the law.

Q. Well, nolle processed and annulled are very different. You say that the marriage was annulled?

A. I was using the word "nolle processed."

Q. We are not using the words nolle processed here. We haven't gotten to the words "nolle processed."

Testimony of Dr. Leon L. Solomon

(Reading:)

1637 "The young woman admits that at the time and place aforesaid that Robinson was placed under arrest on said warrant, but she emphatically denies that she, the young woman, approached Robinson and told him that she was about 7 months pregnant with child and that Robinson was the father of the child and that unless he married her he would be prosecuted on said charge and sent to the penitentiary thereon.

"Robinson's attention had been called to the fact that the young woman was in a state of pregnancy for which he was the cause, many months prior to the time complained of; that his attention was called by the young woman to the fact that she had yielded to him under promises of marriage and that Robinson tried to avoid same after ruining her and making it possible for her then condition of pregnancy. His attention was called to the fact that he owed this young woman, a girl of previous chaste character, and the unborn baby a name, and he was advised at that time that the baby was liable to be born at any time, certainly within a few days or a week. Knowing these facts, he consented to the marriage ceremony complained of.

1638 "It is denied that Robinson was not given an opportunity to consult with his father or counsel at the time he was placed under arrest but defendant is unable to understand why he could expect said privilege or favoritism at the hands of a sheriff. He willingly came to the court house and secured a license, after borrowing a sufficient sum for same together with a sufficient sum for the purpose of purchasing a wedding ring which he suggested they should have and which he in person bought and put upon the finger of this defendant apparently in good faith realizing the importance and sacredness of the event.

"The young woman would further aver that after the ceremony complained of he went to the home of this defendant who was then living with her mother in the city of Nashville, and there in the presence of

Testimony of Dr. Leon L. Solomon

numerous parties admitted that the child to be born was his, and discussed with this young woman and her mother and others as to whether or not the defendant would be taken to a hospital during her period of confinement, which Robinson then understood would be within a few days, or whether she would stay at home with her mother, which he preferred.

1639 "Robinson admitted upon that occasion that he was anxious to live with the defendant as husband and wife and manifested much affection towards her, and much interest toward the unborn babe, and even at that time discussed what they would name the child, if it be a girl, or if it be a boy. He was at that time that he was in school and was unable to support this young woman and baby as he would like to; that he was desirous of completing that year's course in law and as soon as he completed same he would take the defendant and create a home for them, and suggested that the young woman could also work and keep him."

"The foregoing facts certainly disclose that Robinson, who is an intelligent man, taking a law education, had the advantage of the marriage ceremony and had, from after same manifested the belief that he was responsible for the young woman's condition and intended to assume the entire responsibility for same, and that said action was a complete ratification of the ceremony, which he now claims to be false and
1640 a fraud practiced upon him."

Mr. Hogan: Are you reading from the defendant's cross-petition?

Mr. Brown: Yes, that's right. No, I haven't gotten to that yet. That was the answer of the defendant.

Mr. Hogan: Now those are the allegations the defendant set up.

Mr. Brown: In contradistinction to what Robinson set up.

Mr. Hogan: Her answer to his action for divorce.

Mr. Brown: That's right. Now this is the amended.

Testimony of Dr. Leon L. Solomon

answer and cross-bill.

Q. Now, in the amended answer, she apparently re-alleged the matter that was contained in her original answer. Now then there was a trial, was there not, Doctor, and it was submitted to a jury, was it not?

A. I think I remember that.

Q. And these facts seemed to be submitted to the jury: "The following issues of fact are submitted to the jury for its determination:

"1. Is some one other than Thomas H. Robinson Jr. the father of the child called (then the young baby's name)?"

1641 What was the answer to that?

A. "No."

Q. "2. Was the representation made by the defendant, the young woman, or by her mother or Aunt in her presence and with her approval to Thomas H. Robinson Jr. after he had been placed under arrest and shortly before the marriage, to the effect that she was a virtuous girl and chaste girl except for her sexual relations with him, false and untrue?"

And what was the answer to that?

A. "No," it says.

Q. "3. If the second interrogatory has been answered in the affirmative then did said statement mislead and deceive said Robinson into the belief he was the cause of her then pregnancy and caused him to enter into marital relations he would not otherwise have made."

Since the second interrogatory is answered in the negative, that interrogatory is not answered.

A. And I wonder why it wasn't answered when I read it. There is no answer there, yes or no. It should have been.

Q. You think so?

1642 A. I think so.

Testimony of Dr. Leon L. Solomon

Q. Now let's see why it isn't there. Now let's read it over again. Did you read it?

A. I listened to you as you read it.

Q. I thought you said you had seen it before.

A. I have seen it before and I wondered why there was no answer there. The word "answer" is there and there is neither yes nor no.

Q. All right, let's look and see why there is no answer there. Now this is the third interrogatory, isn't it Doctor?

A. It is the third.

Q. All right. "If the second interrogatory has been answered in the affirmative, then did—." Now the second interrogatory was answered in the negative, has it not?

A. He is accused of having taken advantage of a woman against her consent, and of a woman who is under age, and I wondered why this would be nolle prossed when there was no answer to it.

Q. We haven't nolle prossed anything yet, Doctor. That comes later in the story. Now, then, Doctor, a judgment was entered on that verdict wherein the court found that Robinson was the father of this child and that the young woman had theretofore been chaste except
1643 for her relations with him. You saw that, didn't you?

A. I remember that, yes, sir.

Q. You didn't pay much attention to the judgment of the court?

A. Indeed I did. Indeed I did. It was a part of the general picture that I had been trying to analyze because I had been appointed by this Honorable Court.

The Court: Now, just a minute. I think you are wrong there, Doctor. I never appointed you.

Witness: Well then I was told so, Your Honor, that—

The Court (Interrupting): You may have been told, but there is no court order, as I understand, that I appointed you.

Mr. Brown: It is at the request of the defendant that Dr. Solomon is here.

Witness: Your Honor, I thought the protection of this court, with all its dignity and all its majesty, was mine no

Testimony of Dr. Leon L. Solomon

less than those other four gentlemen whom you had appointed.

The Court: You were subpoenaed as a witness by the defendant. Don't think I appointed you.

Witness: I have not been subpoenaed, Your Honor. No subpoena has ever been served on me.

1644 The Court: Well you were asked to come here by the defendant.

Mr. Hogan: That is true. He is here for the defendant, but the government is paying for it.

The Court: Yes, but he was never appointed.

Mr. Hogan: No, he was not appointed by the Court, but there was an order entered that whatever services he performed be worth he would be paid by the United States of America.

The Court: On the motion of the defendant. I sustained that motion that his compensation be paid by the government, but I never appointed him.

Mr. Hogan: That is true. He has never been appointed by the Court.

Q. Now, then, Doctor, there was a motion on behalf of Robinson for a new trial, was there not?

A. As I remember there was.

Q. And that motion for a new trial was made by Robinson in person or by his attorney was sustained, wasn't it?

A. That is what I remember.

Q. "The cause came on to be heard before the Honorable Harry A. Church (it looks like), Chancellor of Part II of the Chancery Court of Davidson County, Tennessee, upon the pleadings on file and the whole record in this cause and from all of which the Court is pleased to find as follows:

1645 "The complainant, Thomas H. Robinson Jr., has sustained the allegations and charges made in his amended and supplemental bill, that is that the defendant, this young woman, has been guilty of such cruel and inhuman treatment or conduct toward Thomas H. Robinson Jr. as to render it unsafe or improper for him to cohabit with her as alleged in his amended and sup-

Testimony of Dr. Leon L. Solomon

plemental bill; that she did, subsequent to their marriage, falsely, maliciously and wilfully charge him with having committed the crime or felony of rape upon her body prior to their marriage and of forcibly having sexual intercourse with her while she was unconscious from the effects of some drug administered to her by him, said charges having been made by her since their marriage to a committee of the Ku Klux Klan for the purpose of having him mobbed or otherwise punished and mistreated by same; and in fact the complainant did not administer any drugs to her nor did he 1646 forcibly have sexual intercourse with her but all sexual relations had between the young woman and the defendant were consented to by her; that thereafter the complainant is entitled to a divorce from the said defendant on the ground of cruel and inhuman treatment as alleged in the amended and supplemental bill; that the allegations made in the cross-bill filed by the young woman and cross complaint are not sustained by the proof nor has the defendant sustained the allegations of her answer to the amended and supplemental bill of complaint.

"It is therefore ordered and adjudged and decreed by the Court:

"(a) That the bonds of matrimony heretofore subsisting by and between complainant, Thomas H. Robinson, Jr. and defendant, the young woman, be and the same are hereby absolutely and perpetually dissolved and for nothing held; and that both parties are hereby restored to all of the rights, privileges and immunities of unmarried people.

"(b) That the cross bill filed by defendant and cross complaint be and it is hereby dismissed.

1647 "(c) That from the entry of this decree, both complainant and said defendant desiring it the Court decrees that said defendant shall hereafter be known as, and go under (the young lady's name), which shall be and is hereby designated as her name after the entry of this decree, dissolving the bonds of matrimony between the parties.

Testimony of Dr. Leon L. Solomon

"(d) The Court does not pass upon or decide the issue of fact made in the pleadings as to the paternity of the infant defendant (naming it) but said issue of fact as to the paternity of said infant defendant is expressly reserved by the Court, and this decree shall not preclude any parties from hereafter litigating said issue.

"(e) The defendant (the young woman) is not entitled to any alimony or support from complainant.

"All questions of attorneys fees and fees of the guardian ad litem having been settled and compromised out of Court are herein adjudicated.

"The costs of this cause are adjudged against the complainant and J. G. Lackey and Carlton Loser, his sureties for the costs, for which execution may issue."

1648 Q. Then next follows the certificate of the various members of the court down there.

A. That is what I had reference to when I said it had been annulled.

Q. Well you had reference to that but it had not been annulled.

A. It is annulled in this record. According to the Court, they annulled it.

Q. All right. I will not argue with you; your mind is made up that it was annulled.

A. I think I understand the English of it.

The Court: Doctor, do you understand the difference between a divorce and an annulment?

Witness: I don't know that I do.

The Court: The judgment, I believe, rendered a judgment of divorce in that case.

Mr. Brown: Yes; there is no question about that. Your Honor.

Q. Now, did you examine the records of the Western State Hospital?

A. That's at Bolivar?

Q. Yes.

A. I did not. I did not get to Bolivar.

Q. Well now, as a matter of fact, don't you know

Testimony of Dr. Leon L. Solomon

1649 that at Bolivar that they found that Robinson was sane.

Mr. Hogan: No, they did not.

A. It was not my knowledge, sir. It has been brought to me that his father took him out on his own responsibility, and he was told very positively that he was a menace to society.

Q. All right. Now if you haven't examined the records, but you have been told—did Mr. Hogan tell you that?

A. I think I first heard this from Clem Huggins in 1936.

Q. Oh, Mr. Clem Huggins in 1936 told you first?

A. Yes.

Q. Has Mr. Hogan told it to you since?

A. I don't remember that I got that from Mr. Hogan.

Q. Has the defendant Robinson told you?

A. What did Robinson tell me?

Q. That he was released from the Western State Hospital on a diagnosis of sanity or a diagnosis of insanity? Which did he tell you?

A. I don't remember that I asked him that question.

Q. Well did you listen to the hypothetical question of Mr. Hogan?

A. This morning?

1650 Q. Yes?

A. Yes.

Q. Well what did you assume from Mr. Hogan's hypothetical question about his release from Bolivar, if you assumed anything from Mr. Hogan's hypothetical question?

A. I think it was made very plain in that hypothetical question that when he was released it was upon the urgent request of his father who had become his guardian, and he claimed that he had a right to take his son and that, if I remember that part of the hypothesis, in that particular instance, it had to do with the fact that the father was warned that his son was not sound and would be guilty of some depredation, or might be. The father assumed the responsibility and took him out.

Q. What did you hear about the doctors at Western? What did you hear about their diagnosis?

Testimony of Dr. Leon L. Solomon

A. While he was in the hospital?

Q. Yes?

A. As I say, I am not familiar with what transpired after, except as it appeared in this hypothetical question.

Q. All right. What did Mr. Hogan say about it in his hypothetical question?

A. I gathered from Mr. Hogan's question, it **1651** was exceedingly long and difficult for me to retain, but as I retained it, the father took his son out against and over the objection of the superintendent who had warned him not to take him out, and the father signed a letter of release. I think that's correct.

Q. You don't recall what Mr. Hogan told you what the diagnosis of the staff of doctors was at Western State Hospital?

A. If that was mentioned in that long hypothetical question, I didn't hear it.

Q. You did not take into consideration, now, the diagnosis of the staff of the doctors at the Western State Hospital in your answer to that hypothetical question?

A. I had to take it for granted that a father would sign—because I have been made myself—patients have been paroled to me and I had to sign a paper that I was responsible for them.

Q. You took it for granted then that at the time of his release from the Western State Hospital that he was still suffering from a psychosis, and was a menace to society and it was over the objection of the superintendent that he had been removed?

A. Yes, sir, that is my understanding.

Q. Now let's see, Doctor, about this term psychopathic personality. Now if I understand the sense of your testimony this morning, you used the term **1652** "psychopathic personality" to denote some psychosis?

A. It must be. Whenever you have the word "psychopathic" is must be psychosis.

Q. Now is that your opinion or is that the opinion of the medical text books writers?

A. That depends upon the one that you may quote. There is a difference of opinion between medical men and

Testimony of Dr. Leon L. Solomon

there must be between you lawyers as to what words means.

Q. Well now you didn't indicate that this morning in your direct testimony. You mean that some textbook writers and some doctors use the term "psychopathic personality" to denote a person without a psychosis, while other doctors, including yourself, use the term "psychopathic personality" to mean someone suffering from a psychosis.

A. I think I made it very plain this morning that there are times when the individual of a psychopathic personality may not be insane, but he is just as likely to be the next day. I think I said that.

Q. Now, as a matter of fact, Doctor, psychopathic personality has nothing to do with mental defect at all, has it?

A. Not necessarily because they may be quite
1653 same at all times.

Q. Now then it is a character defect, Doctor, rather than a mental defect?

A. Well you can hardly have a character defect without the mind behind it to direct it. It is a character defect.

Q. So then in your use of the word "sane" you are including both character defects and mental defects?

A. Yes, if the character is bad or if it is strange or if it is not average, it is probably the result of some mental defect.

Q. Well now did you listen to Mr. Hogan's definition that he asked you to base your hypothetical question on?

A. I did.

Q. All right. Now let's see if this is right. (Reading):

"The term 'insanity' means such perverted and deranged condition of the mental and moral faculties as to render a person incapable of distinguishing between right and wrong or unconscious at the time of the nature of the act is committed, or where, though conscious of the nature of the act and able to distinguish between right and wrong, and know that the
1654 act is wrong, yet his will, that is the governing power of his mind, has been otherwise and voluntarily so

Testimony of Dr. Leon L. Solomon

completely destroyed that his actions are not subject to it and are beyond his control."

Now, did you understand that?

A. I understand it.

Q. Now there is no mention of character in that at all, is there?

A. Not necessarily a mention of character, but you can't possibly avoid consideration of character as being a part of it. You can't have that and exclude character.

Q. You mean, from your definition of insanity, that you are using in answer to the hypothetical question, you include not only some mental but some character defect?

A. Well, sir, I can't conceive of a man being mentally unsound without some character defect.

Q. Well, can you assume somebody being mentally sound with a character defect?

A. I can assume a man being mentally sound and having a character defect, yes.

Q. Now then I will ask you if this isn't the generally recognized meaning of a psychopathic personality, that (reading):

1655 "Psychopathic personality is a term applied to various inadequacies and deviations in the personality structure of individuals who are neither psychotic nor feeble-minded, the defect existing particularly in the conative, emotional and characterological aspects of the personality. These aspects are not so organized and adapted to each other as to operate as a harmonious unit or to permit coordination of the individual with his environment. Since there are differences of conception as to what constitutes psychopathic deviation, and as neither its clinical characteristics nor its clinical limits are sharply defined, it is considered by many to be a meaningless designation. Although vague, too comprehensive and often loosely used it is a convenient term for certain variances, distortions and discords of personality that lie in the wide zone between mental health and mental disease."

Now isn't that the general—

Testimony of Dr. Leon L. Solomon

A. (Interrupting) I accept it, but it doesn't apply to this man. He is not a psychopathic personality. You ask me a question about this man that would apply to him.

Q. You think it does not apply to him?

1656 A. I don't think that at any time he has been a psychopathic personality, and if you read your words carefully, they speak of its being vague, and it is vague, because it is in a realm about which we will probably never be able to define it, except in the individual and not in a definition that applies to average.

Q. So then there is a widespread use of the word "psychopathic personality," in which there is no conation of psychosis at all. Isn't that true?

A. The author says so.

Q. I am not talking about whether the author says; I am asking you—

A. (Interrupting) This author says so, and of course there is.

Mr. Brown: That is all.

Redirect Examination by Mr. Hogan.

Q. Now, Dr. Solomon, Mr. Brown has very carefully exhibited to you for the purpose of refreshing your recollection this divorce action between Thomas H. Robinson Jr. and a certain named woman, the defendant in that case. Was it plain to you that in that action this defendant brought the suit against the named young woman?

A. I didn't quite get your question.

1657 Q. Is it plain or was it plain to you that Robinson, Junior brought that action for a divorce against the named young woman in that divorce action?

A. I think that that's plain.

Q. And it was likewise plain from his reading of the record, that this defendant, the young woman in question, had been made upon false and malicious statements. You understood that, did you not?

A. I understood that. That was in, I think, the second proceeding.

Q. And the allegations made by this named young woman defendant had not been sustained by her proof.

Testimony of Dr. Leon L. Solomon

That was true and correct as you understand it?

A. It was.

Q. And was it not true that the chancellor, the judge who heard the case upon the pleadings, the proof on file, oral proof, and the whole record, that Thomas H. Robinson, Jr. had sustained his charges and allegations made in his amended and supplemental bill. You understood that, did you not?

A. I did.

Q. That is, that the defendant young woman had been guilty of such cruel and inhuman treatment or conduct towards the complainant, Thomas Henry Robinson, Jr., as to render it unsafe or improper for him to cohabit

1658 with her? That's what the court decided, wasn't it?

A. That was my understanding of its decision.

Q. "That she did (meaning the defendant young woman) subsequent to their marriage, falsely, maliciously and wilfully charge him, Robinson, with having committed the crime and felony of rape upon her body prior to their marriage by forcibly having sexual intercourse with her while she was unconscious from the effects of some drug administered to her by him, said charge having been made by her since their marriage to a committee of the Ku-Klux Klan for the purpose of having him mobbed or otherwise punished and mistreated by the Ku-Klux Klan."

A. That was my understanding.

Q. "That in fact the complainant, Thomas Henry Robinson, Jr., did not administer any drug to her nor did he forcibly have sexual intercourse with her as charged by her." That's what the court rendered its opinion—that is the court's opinion?

A. That was my understanding of the reading of it.

Q. "That therefore the complainant Robinson is entitled to a divorce from said defendant on the ground of cruel and inhuman treatment as alleged in his amended and supplemental bill." That's what the court decided, was it not?

A. That's my understanding.

Q. "That the allegations made in the cross bill

1659 filed by the defendant and cross complainant young

Testimony of Dr. Leon L. Solomon

woman are not sustained by the proof." That was the court's decision, was it not?

A. That was my understanding.

The Court: Hasn't that all been read to the jury once?

Mr. Brown: Every bit of it.

The Court: What is the purpose of reading it the second time?

Mr. Hogan: I just wanted to show that this young woman had made false—

The Court: I mean, we don't show the jury the same thing by the same witness twice, usually. It has been shown to the jury once by this witness. Do you have to read it over again? Weren't all of those read by Mr. Brown?

Mr. Brown: Everything that I read.

Mr. Hogan: If the court says do not read it again, I will not do so.

The Court: Well, I don't see the purpose of it. I am glad to listen to reason, but outside of repetition I see nothing else to be gained by it.

Mr. Hogan: Then the hypothetical question this morning was based upon facts that this defendant now, Thomas

1660 Henry Robinson, Jr. based partly on the fact, that he had been granted a divorce from this woman who made the charge that he was the parent of her unborn child.

Q. You understood that, did you not?

A. I did.

Q. And the court gave him a clean bill of health upon that, did it not?

Mr. Brown: I object to that. The record speaks for itself.

*The Court: The record speaks for itself on that. The record has been read to the jury at least once and a half times, and I think if there is any question about what it says it can be read to the jury again in closing argument. It is not necessary to put it in evidence again.

Recross-examination by Mr. Brown.

Q. Doctor, in this record, Robinson paid all the costs, didn't he?

Testimony of Dr. Leon L. Solomon

A. I didn't understand—I paid no particular attention to that, who paid the costs. I remember—

Q. "The costs of this cause are adjudged against complainant and J. G. Lackey and Carlton Loser, his sureties, for the costs." This young man paid all the costs.

Mr. Hogan: Wait a minute. Let's see about 1661 that. As I understood it when you read it, there was something in there that the costs were paid by agreement. Did you understand that when Mr. Brown first interrogated you?

Mr. Brown: No, sir, I didn't say that.

Mr. Hogan: Doesn't the record say that?

Mr. Brown: No, sir. "All questions of attorneys fees and fees of the guardian ad litem having been settled and compromised out of court are herein adjudicated." And the next paragraph, "The costs of this cause are adjudged against complainant and J. G. Lackey and Carlton Loser, his securities for the costs, for which execution may issue."

Mr. Hogan: What about the compromise and settlement, what does that say?

Mr. Brown: "All questions of attorneys fees and fees of the guardian ad litem, having been settled and compromised out of court, are herein adjudicated."

Mr. Hogan: Now, Doctor, do you know anything about the procedure in courts as to who usually—against whom usually the costs are assessed?

Mr. Brown: I think that's a legal question for the judge, rather than a question for the doctor.

The Witness: I wouldn't know about it.

Mr. Hogan: That's all, Doctor.

The Court: Is that all, Mr. Brown?

Mr. Brown: That's all.

1662 The Court: Before we start in with the cross-examination of the next witness, we will take a short recess.

Members of the jury, do not discuss the matter among yourselves or permit anyone to talk about it in your presence.

The marshal announced a short recess.

The court was thereafter adjourned to 9:30 a.m. the

Testimony of Dr. Thomas J. Crice

next morning without further evidence being heard.
 1663 Court convened at 9:30 a.m. Friday, December
 10th, 1943, pursuant to adjournment, and the fol-
 lowing proceedings were had:

DR. THOMAS J. CRICE resumed the witness-stand,
 and was examined and testified as follows:

Cross-examination by Mr. Brown.

Mr. Brown: Shall I proceed, Your Honor?

The Court: Yes, sir.

Q. Now Doctor, from what type of insanity did you
 find this defendant to be suffering?

A. Apparently he has made a recovery.

Q. He is not insane now?

A. No, sir.

Q. Have you examined him since he has been returned
 to the Jefferson County Jail?

A. Yes, sir. I examined him on November 8th, 9th and
 15th of this year.

Q. At that time you found him to be in good mental
 and physical conditions?

A. Yes, sir. He seemingly had recovered.

Q. Now, in answer to Mr. Hogan's hypothetical ques-
 tion, you answered that on the facts as were given to you,
 that person did not know right from wrong and did
 1664 not realize the legal consequences of any criminal
 act. Am I right about that?

A. Yes, sir.

Q. Now, during the entire period covered by that
 hypothetical question, in your opinion did, at any time
 during that period, this defendant know right from wrong
 or realize the consequences, legal consequences, of any
 criminal act?

A. According to the record, I would say he did not.

Q. So that is from nineteen what, to what?

A. I don't remember the exact dates. They are in the
 record.

Testimony of Dr. Thomas J. Crice

Q. What event happened that caused him to become deranged?

A. The defendant was a dementia praecox early.

Q. I mean, that is, of course, a conclusion—I want to know what fact first directed your attention to lead you to diagnose him as a dementia praecox?

A. Early in his career he was rather a devoted church member and he fell out with the church, he thought that the minister was preaching direct to him.

Q. Is that the fact that made you think—

A. Just a minute, please. He fell out with the minister because he was preaching directly toward him. He was antagonistic to anti-social—

1665 Q. That's not facts, is it, Doctor. That's conclusions.

Mr. Hogan: That is a fact.

A. It is in the record.

The Court: I think, Doctor, we don't want any detailed discussion at the present time. What Mr. Brown is trying to arrive at is, Mr. Hogan's question directly pointed to the date of October 10th, 1934, and Mr. Brown wants to know how much before that time did you think he was in the same condition. Now whether that's an exact date or whether that's an indefinite date, you can give us some answer to that. Was it one day, or one month, or one year, or two years, or what?

The Witness: Over a period of years.

Q. Over a period of years then, he hadn't become insane, he was gradually becoming insane?

A. Dementia praecox is always—individuals that are insane—it isn't any period of years, they gradually become worse and worse and show more manifestations as they go along.

Q. Now then, your diagnose then, in answer to the hypothetical question, is not one fact but a series of facts?

A. That's true.

1666 Q. Now then, you said he was subject to irresistible impulse. Now what do you mean by irresistible impulse?

A. Irresistible impulse is one that the individual is

Testimony of Dr. Thomas J. Crice

absolutely out of mental control, his objective consciousness seems to be paralyzed or ineffective in carrying out his actions.

Q. Now then, would you say that this so-called forced marriage was the result of an irresistible impulse?

A. That was a sequence. It seems to me like that was a force. He didn't care to marry the young woman. That was a situation.

Q. So it was the impulse there not to marry and some outside force was brought to bear on him to make him marry.

A. It was a situation.

Q. I will agree it was a situation, but he had no impulse to marry.

A. I wouldn't say whether he did or whether he didn't—

Q. (Interrupting) What is your best judgment on it?

A. (Continuing) —but it seems to me that he was more or less having to proceed to the marriage.

Q. So the irresistible impulse doesn't fit into that situation, does it?

1667 A. Not altogether.

Q. Well, does it fit into it at all?

A. I have just answered that question.

Q. Please answer it again.

A. It was a situation.

Q. Did the irresistible impulse fit into that situation at all?

A. Not materially, no.

Q. All right, to what extent then, if not materially?

A. The irresistible impulse in his forced marriage did not denote and it did not characterize any insane act, to my mind.

Q. Can't you answer my question, Doctor?

A. I have answered your question as I understand it.

Mr. Brown: Read the question to the doctor.

(The following question was read by the reporter:)

“To what extent then, if not materially?”

Testimony of Dr. Thomas J. Crice

Q. To what extent then? You said to not a material extent. I want to know to what extent.

A. Probably no extent at all. I wouldn't be able to answer that in its entirety.

Q. Haven't you answered it, to no extent at all?

A. Not in its entirety.

1668 Q. Now let's get to the robberies—the impersonation and the robberies of the jewelry of Mrs. Lamb and Mrs. Waggoner. To what extent did the irresistible impulse fit into that situation.

A. He was thoroughly insane, under a systematized delusion.

Q. Of what?

A. Persecution, being ostracized from society, being imposed upon, being interfered with in obtaining employment, had had difficulties in various schools.

Q. Let's wait now. What interference at that point had he suffered in his employment?

A. He had had trouble in his employment.

Q. What employment up to that time?

A. Various employments.

Q. Hadn't he been a student up to that point?

A. He had been a fair student, yes.

Q. That's what I am trying to find out. What employment was interfered with?

A. He had employment in various positions and could not hold his jobs.

Q. Not at that time, Doctor.

A. Just what time are you referring to?

Q. I am talking about the robberies of Mrs. Lamb and Mrs. Waggoner.

1669 A. He was under a delusion then.

Q. I am asking what employment you say he couldn't get. That's what I am directing your attention to, Doctor.

A. He did receive a number of jobs, but he was not able to—

Q. (Interrupting) I am talking about that time, Doctor, when he was a student.

A. He wasn't employed when he was a student other

Testimony of Dr. Thomas J. Crife

than during vacations, he may have had some little employment then.

Q. Do you know anything about that at all, when you say may have?

A. I am assuming that he may have had some little jobs during vacations.

Q. Was that contained in Mr. Hogan's hypothetical question?

A. I don't think so.

Q. Where did you get that information?

A. I had obtained it from the defendant.

Q. You are not answering a hypothetical question at all then, are you?

A. It is pretty hard to understand just what you want.

Q. I am trying to understand what you were
1670 testifying to.

A. The defendant was insane, according to the facts in the hypothetical question.

Q. Yes, but you just said you didn't take those facts into consideration when you answered that hypothetical question. You took certain other facts into consideration.

Mr. Hogan: He did not say that at all.

The Court: He said he got certain information from the defendant about his being employed in vacation time, and as I recall there was nothing in the hypothetical question to that effect, was there?

Mr. Hogan: But Mr. Brown said that he did not take into consideration the facts—

The Court: Well, probably better, he took other facts into consideration that were not contained in the hypothetical question.

Q. You did take other facts into consideration that were not contained in the hypothetical question?

A. Oh, in a minor way, yes.

Q. Now then, when next did the irresistible impulse hit him, Doctor?

A. I am not sure that I testified to any extent about irresistible impulses.

Q. Yes, sir, you did.

A. I say after he had his unconsciousness that his

Testimony of Dr. Thomas J. Crice

1671 acts were not controlled because of that fact.

Q. Was he suffering from any irresistible impulse?

A. No doubt he was, but just to what extent I am not able to tell you.

Q. You mean he may or he may not have been?

A. That's largely a hypothetical question.

Q. And you mean your answer was largely hypothetical, too?

A. To the hypothetical question that Mr. Hogan read, yes.

Q. Now, he was married, was he not, in 1929, first in 1927, then in 1928, I believe, Doctor. Now, you are familiar with his marriage on January 9th, 1929 to Miss Frances Althausen?

A. According to the record; yes, sir.

Q. Was he suffering from an irresistible impulse at that time?

A. I wouldn't say that his particular marriage at that time was an irresistible impulse.

Q. It was not, then.

A. I would say it was not.

Q. Now, at the time that he was employed for one day or some longer space with the Servel, Incorporated, was he suffering from any irresistible impulse at that time?

A. I would think he was unstable.

1672 Q. Is unstable and irresistible impulse the same, Doctor?

A. Not exactly. Irresistible impulse is a condition that one puts into action that he is not accountable and not responsible for.

Q. At the time that he was employed for Stoll Oil Company was he suffering from irresistible impulse?

A. I wouldn't say that that was an irresistible impulse because he was employed.

Q. At the time he was employed by the Mutual Life Insurance Company, was he suffering from any irresistible impulse?

A. I wouldn't say that was irresistible impulse.

Q. At the time he was employed by the Andrew Jack-

Testimony of Dr. Thomas J. Crice

son Business University for a period of several months, listing new students, was he suffering from an irresistible impulse?

A. I wouldn't say because a man has a position, he is trying to succeed in life, that it is an irresistible impulse, no.

Q. At the time he was employed by the A. B. C. Corporation, was he suffering from an irresistible impulse?

A. No. I wouldn't think those situations were irresistible impulses.

Q. At the time he was employed by the Mar-
1673 Main Apartment Hotel, was he suffering from an irresistible impulse?

A. I see nothing in the question that would indicate irresistible impulse.

The Court: I think Mr. Brown is probably meaning, was his condition of mind such that he could not—

Mr. Brown: (Interrupting) Control his actions.

The Court: (Continuing) —restrain himself from doing what some impulse led him to do at those different times.

The Witness: Yes, he had a psychosis along in those years at that time.

The Court: Doctor, he didn't ask you about a psychosis. He wanted to know whether his irresistible condition of mind existed at those different times that he has referred to, not whether he got the job as the result of an irresistible impulse, but whether that was the condition of his mind when he was employed at the Stoll Oil Company, or at the insurance company, or at the Andrew Jackson School.

The Witness: He was a boy with more or less unstable tendencies, was not directing—

The Court: Doctor, let me interrupt you again. I think Mr. Brown is entitled to an answer to his question. He didn't ask you about unstable influences. He directed your attention specifically to that condition of mind
1674 known as irresistible impulse. That's what he wants an answer to. Let's don't get off on some other
point.

Testimony of Dr. Thomas J. Crice

The Witness: Pardon me, Judge, but I tried to tell you that I did not believe that was an irresistible impulse when he obtained employment.

Q. Now, at the time he was charged with having committed certain robberies down in Tennessee in 1934, was that an irresistible impulse?

A. I wouldn't say those were irresistible impulses, no.

Q. If he had committed the robberies, would it have been irresistible impulse that caused him to do it?

A. It was an inability to know what was right from wrong.

Q. Was he suffering—if he had made those robberies, was he suffering from an irresistible impulse when he made those robberies?

Mr. Hogan: When?

Mr. Brown: In 1934.

Mr. Hogan: The hypothetical question, as I recall it, was not based upon the commission of the robberies, but—

Mr. Brown: (Interrupting) I asked him, if he had committed the robberies, was he suffering from an irresistible impulse.

1675 Mr. Hogan: Your basis is improper because the hypothetical question is based upon the premise that he was charged in that year with the commission, but there was no conviction, and he has never been convicted of those charges, or any other charges, for that matter.

Q. If he was not guilty of those charges, of course the impulse had nothing to do with it one way or another, did it?

A. I am not very much impressed with the irresistible impulse.

Q. At the time he jumped out of the window when the policemen were coming through the front door and he fled to Chicago, was he controlled by irresistible impulse?

A. No, I don't see the point in irresistible impulse in those situations.

Q. No point in it at all, is there, Doctor?

A. In my opinion, it is very thin.

Q. Very thin. He wasn't suffering from irresistible impulse then.

Testimony of Dr. Thomas J. Crice

A. I don't put a great deal of credence on irresistible impulse as you put them—as you state them.

Q. As I state them or you state them?

A. No, you.

Q. Was this defendant, in response to the hypothetical question put by Mr. Hogan, at any time suffering from an irresistible impulse?

1676 A. Under the insane delusions that he was suffering from, that is a possibility.

Q. Is an insane delusion and irresistible impulse the same, Doctor?

A. An insane delusion will create and will abet, and will influence, irresistible impulses.

The Court: Doctor, I don't want to interrupt too often, but I think that we are trying to get ahead with the examination, and Mr. Brown is directing your attention specifically to the theory of irresistible impulse, and you are continually going off into a question about insane delusions and other matters. Now, what he wanted to know was whether or not the irresistible impulse existed. Now don't get off into something else. If you think not, say so; if you think it did, say so. Let's don't travel off into some other field. Repeat the question, Mr. Brown.

Q. Was this defendant at any time suffering from an irresistible impulse?

A. I don't know.

Q. In your opinion, was he?

Mr. Hogan: When?

Mr. Brown: At any time.

Mr. Hogan: Let's confine it to the time—

Mr. Brown: From 1929 through the date of Mr. 1677 Hogan's hypothetical question, 1936.

A. No, I don't think so.

Q. As a matter of fact, irresistible impulses are rare in medicine, are they not, Doctor?

A. Rare in psychiatry.

Q. Rare in psychiatry. Rarer still in criminology, are they not?

A. I am not discussing criminology.

Q. You know something about it, though, don't you?

Testimony of Dr. Thomas J. Crice

A. I believe I do.

Q. Isn't it rarer still in criminology?

A. In criminology it is my individual opinion that irresistible impulses and psychiatric conditions do not exist.

Q. So in criminology, it is your opinion that there is no such thing as an irresistible impulse, is it not, Doctor?

A. I don't think so.

Q. You mean you don't think my statement is true or you don't think irresistible impulses exist?

A. I tried to answer your question. I do not believe irresistible impulses exist in criminology.

Mr. Brown: That's all, Doctor.

Redirect Examination by Mr. Hogan.

1678 Dr. Crice, when you speak of the non-existence of irresistible impulse in criminology, you associate that with a passion, do you not?

A. Well, it could be interpreted in that way.

Q. Sudden heat of passion or afraid, that's what you refer to as irresistible impulse in criminology, is it not?

A. Yes, sir.

Q. Now, what about this term "willpower", lack of control over willpower?

A. An individual must have enough normal mentality to control his willpower, to know the deed or act, he must have a consciousness of what is right and what is wrong.

Q. So when you say you don't put much credence in the term "irresistible impulse", you do not mean to say that this defendant between 1929 and 1934 had all of his willpower faculties, do you, Doctor?

A. No, sir, I did not think so.

Q. So you make the distinction between irresistible impulse and lack of control or lack of willpower, do you not?

A. There is a very definite line of demarcation between those questions.

Q. I will ask you again, if you believe, between that period of 1929 and 1934, this defendant had control over his willpower.

1679

Testimony of Dr. Thomas J. Crice

A. I do not.

Q. So you make that distinction between irresistible impulse and lack of control over his willpower, don't you?

A. I would like to explain. One that suffers with irresistible impulses might be entirely sane, many sane people have impulses that we wouldn't like to relate, but with a proper control of our consciousness we do not carry out or put those impulses into effect.

Q. Do you believe still, after all that you have been asked by Mr. Brown, that the defendant here between the period of 1929 and 1936, we will say, had systematized delusions?

Mr. Brown: I believe he has been all over that.

Mr. Hogan: I am asking if his opinion is still the same after you examined him. I think I can show that.

The Witness: Are you ready for the answer?

The Court: All right.

A. Yes, sir.

Q. Do you believe that between that same period, this defendant had control over his willpower or lack of control over his willpower?

A. According to the record—that I read, it was a mass of insane, wild delusions that has no place in a normal mind whatever.

Q. Then do you believe now, still, that this defendant had any control over his actions? In other words, did he have willpower sufficiently to prevent him from carrying into action these insane delusions?

A. I don't believe he did.

Recross-examination by Mr. Brown.

Q. Doctor, you mean, assuming he got, as a result of this kidnapping, a very large sum of money; assuming further that for a period of nineteen months he successfully avoided the greatest law enforcement agency in this country; assuming that he escaped capture by living under assumed names, traveling rapidly across the continent three or more times, you mean to say that man wasn't at that time in control of all of his faculties and knew exactly what he was doing?

Testimony of Dr. Thomas J. Crice

A. I don't think he did.

Q. You don't think he did.

A. I don't think he knew.

Q. Why, Doctor, would it have been necessary for him to leave anywhere at all?

A. He may have had some other influence, may
1681 have been a situation.

Q. You mean he might have had the situation of being confronted with a very large sum of money and he wanted to spend it.

A. The situation may have been that someone else had something to do with the traveling and expending of money.

Q. Is there any evidence in the hypothetical question that someone else had something to do with it from October—

A. (Interrupting) Not in the hypothetical question.

Q. What other information do you rely on?

Mr. Hogan: I will correct you there, there is in the hypothetical question that—

Mr. Brown: He said he didn't recall.

Mr. Hogan: (Continuing) —he associated with another person.

Mr. Brown: Just a moment. I don't want my cross-examination interrupted.

Q. (Continuing) —from October 16th, 1934, to December 31st, 1934, no one other than this defendant was directing his travels, were they, Doctor?

A. Not that I know.

Q. Well, during that time when he successfully
1682 avoided one of the greatest man-hunts in this country by masquerading under assumed names, by living in the best hotels and by spending money in a very lavish fashion, you mean at that time he was not in control of exactly what he was doing and doing what he wanted to do?

A. I don't believe he was.

Q. Now Doctor, as a matter of fact, you don't place much stock in a defense of insanity in a criminal case, do you?

Testimony of Dr. Thomas J. Crice

A. Oh, yes.

Q. Do you or do you not?

A. I depend on facts, yes.

Q. Well, as a general thing, you don't place much stock in the defense of insanity in a criminal case, do you?

A. I don't think that's hardly a fair question.

Q. Fair or not, would you answer it?

A. Yes. I put a great deal of stock in any truth and facts.

Q. Do you place much stock in the defense of insanity in a criminal case?

A. I do.

Q. You do?

A. Yes.

Q. Doctor, I wonder if this sounds familiar to you, I know it sounds familiar to me: "We medical men
1683 are often made another brake on the slow wheel of justice, and we abet sentimentality of the press by being asked to testify in and out of season to the lack of responsibility of the criminal. Law is an instrument for the protection of society. It is not a clinic."

A. Well, I borrowed that from Dr. Foster Kennedy of New York City.

Q. Well, you mean you borrowed it without placing much stock in it?

A. Well, it was more or less of an argument when I wrote it.

Q. You apparently assumed the same side as Dr. Kennedy, did you not?

A. I believe at that time that there was a great deal of facts in that thought. He pointed out how some courts proceed in insanity and how some courts lacked the procedure that the doctor would be able to present medical facts in cases.

Q. Doctor—

A. Just a minute, please. And how much he was obstructed in trying to convey his honest convictions to various courts.

Q. I will ask you, Doctor, if you don't believe rather thoroughly in so-called court house insanity or prison

Testimony of Dr. Thomas J. Crice

cramps and court room fever.

1684 A. That's one of my—they said it was one of my original breaks, I don't know whether it was or not, but that seems to be a fact in some cases.

Q. Now, the very fact that crime having been committed, in your opinion hasn't it come to be *prima facie* evidence of the insanity of the criminal?

A. I was pointing out in that article what I thought was the facts in criminology, not insanity, in criminology.

Q. Well, you used the word insanity, did you not, Doctor?

A. I don't remember.

Q. Well, let's examine it and see.

A. My reference was in criminology. If you will just wait a minute, Mr. Brown.

Q. I will call your attention to this—

Mr. Hogan: I think he has a right to explain his answer.

The Court: He can explain it after he makes it: I think he is entitled to show him what the article said.

Q. This is called, "The Psychiatrist's Responsibility to Society and the So-called Criminal Insane," and by Thomas J. Crice, M. D., Louisville.

A. Yes.

1685 Q. And let's read this: "To many people, the very fact of a crime having been committed had come to be *prima facie*"—then you have in parenthesis, court house insanity—

A. I would like to explain that; yes, sir.

Q. All-right, you can explain it.

A. Court house insanity that inspired me to write that particular paragraph was in reference to criminally insane. To illustrate, I was called upon by the Criminal Court too often some years ago to give an opinion as to whether or not an individual that had suddenly slain another individual, he had never been known to be ill of any disease, body or mind, but suddenly, the evening or the day the murderer was brought into court, he pleaded insanity. I termed that court house insanity.

Q. Now, when did this defendant first assert insanity?

Testimony of Dr. Thomas J. Crice

A. According to the record, he showed evidence of insanity in his early—

Q. Not evidence, but when did he first assert the defense of insanity?

A. In his early youth.

Q. As a matter of fact, Doctor, don't you know the first time that he asserted the defense of insanity was when he was charged with robbing Mrs. Lamb and Mrs.

1686 Waggoner of over six thousand dollars worth of jewelry?

Mr. Hogan: Now wait a minute. That's the only time he could assert the defense of insanity in a criminal charge:

Mr. Brown: Isn't that the first time? He said the word defense, never been charged with any other offense.

Q. Wasn't that the first time this defendant had ever claimed to be insane?

A. That was in a court action.

Q. We are talking about court house insanity, aren't we?

A. I am speaking of the insane mannerism that the defendant showed and demonstrated back in early boyhood.

Q. What?

A. Unstablensess.

Q. You mean unstablensess is—

A. Mental unstablensess.

Q. Mental unstablensess. What mental unstablensess did he show in his early boyhood?

A. He wasn't reliable.

Q. How do you know that?

A. According to the history.

Q. You say he wasn't reliable. I will ask you if he didn't go through the Ross Preparatory School, got
1687 very good grades, he went through the Wallace Preparatory School and got excellent grades with the exception of one subject, he then went to Vanderbilt and got extremely good grades?

A. If you will please allow me, many dementia praecox doesn't show sufficient evidence to the laity, and many medical men, until there is some wide-open demonstration.

Testimony of Dr. Thomas J. Crice

Q. You mean this robbery of Mrs. Lamb and Mrs. Waggoner was a wide-open demonstration?

A. I didn't say that.

Q. What do you mean by a wide-open demonstration?

A. One that is showing definite signs of insanity.

Q. All right, in this case, what was the wide-open demonstration?

A. On one occasion he abused and slapped his mother, and another occasion he wanted to shoot his father and would have done it if it hadn't been for his mother.

Q. When was that?

A. I don't remember the date.

Q. So you don't know whether that happened before he robbed Mrs. Waggoner or not?

A. I am not certain about the date.

Q. Now Doctor, don't you subscribe really to the theory that the so-called acquittal on account of a mental disease or a semi-mental disease is often a feeble release of wolves to prey on the people and should no longer
 1688 be tolerated?

A. Not if the individual has proper diagnosis, proper trial.

Q. Let's see what you say here, Doctor: "Acquittal on account of a mental disease or semi-mental disease is often a feeble release of wolves to prey on the people and should no longer be tolerated."

A. I said that. But let me explain.

Q. Oh, surely.

A. I said semi-feeble or just purely cocked up or cooked up insane pleas over night in order to escape punishment.

Q. You didn't say semi-feeble at all, Doctor, did you? You said, "Acquittal on account of a mental disease or semi-mental disease is often a feeble"—not semi-feeble—"is often a feeble release of wolves to prey on the people and should no longer be tolerated."

A. I would like to extend the meaning of that. So many mental cases, whether they are definite, specific or whatnot, is not treated long enough in our institutions, they are turned out with no effort to look after them and

Testimony of Dr. Thomas J. Crice

treat them or care for them in their period of recovery.

Mr. Brown: All right, Doctor, that's all.

Redirect Examination by Mr. Hogan.

1689 Q. Now Doctor, you are influenced by the fact that two juries of the State of Tennessee, consisting of twelve men each, twenty-four men in all—

Mr. Brown: I object to that. It is purely argumentative.

Q. I ask him if he is influenced by the fact that two juries, at two different times, who had occasion to see the defendant and hear the evidence, came to the conclusion that he was insane.

A. In my opinion, that could not be disputed.

Q. It is a matter of legal record, is it not?

A. Yes.

Q. Now, he asked you about this defendant staying in the best of hotels under an assumed name. I will ask you if that doesn't itself brand him as a super-man type or a grandiose type?

A. Yes. He wanted to hide. He was a big individual, a great super-man, he had great plans in mind, with no foundation, with no sound mental reservation.

Q. That had no basis in logic, did it, Doctor, because a man of his importance to the Justice Department, who they claim were vigilant in his apprehension, would most likely look in the best of hotels for a man with a large sum of money, wouldn't they?

A. I would think so.

1690 Q. So if he had been a normal person, he wouldn't have gone right into the greatest city of the United States and put up at the best hotels, would he, Doctor?

A. That showed impoverished judgment.

Q. Even though he took on an assumed name, the great FBI with all their handwriting equipment and with all their finger-printing devices which they have displayed here, they could easily have detected him, could they not?

Mr. Brown: The answer to that is, they did not.

The Court: Of course, it is argumentative, as to

Testimony of Dr. Thomas J. Crice

whether they could or could not. It is a matter of opinion. The evidence shows it did not up until May, 1936, wasn't it?

Mr. Brown: That's correct.

Q. And the fact that he went to a baseball game, and to the polo grounds in New York, where there was assembled a large crowd of people, didn't that brand him as a grandiose fellow?

A. Yes. He wanted to be out in society, he wanted—he believed he was some extraordinary individual, and he wanted to be seen, probably, wanted to be heard, he wanted to carry out his insane delusions of grandeur.

Q. Had no idea of ever being apprehended, did he, Doctor?

1691 A. I don't think so.

Q. That idea was not a part of his system or make-up, was it?

A. He didn't have mental consciousness enough, mental judgment enough.

Q. When a man possessed of his normal faculties, a sound man, who had committed a crime, would he present himself in the largest crowd or a large crowd in the largest city of the United States?

A. I would think a man with a normal mind, if he was trying to secret himself, he would go into secreted places.

Q. The fact that he went across the country and went to Los Angeles, or, rather, Glendale, within twenty miles of an FBI office with twenty men, procured a rather expensive type of house, right in the arms of the lake so to speak, wouldn't that brand him as a grandiose, super-man type?

A. Yes, it would. He had great ideas then of confederates, pleasing them, doing their bidding, he thought it was just about the right thing to do, he wanted—had a wild notion of buying a ranch in California.

Mr. Brown: Beg your pardon. I don't remember anything about buying a ranch in the hypothetical question.

Q. Leave that out, if there is any objection to
1692 that, we will cut that out and relieve Mr. Brown.

Testimony of Dr. Thomas J. Crice

Mr. Brown: No, not to relieve me. I am wondering if the doctor is testifying from something he did not hear in court on yesterday, that's what I am wondering.

Q. I will ask you this, if after his apprehension and being placed in the federal penitentiary, and the fact that he wrote a letter to the Warden or Bureau of Prisons that he would like to see his associate that he had had on this eighteen or nineteenth month period, like to see this same associate who had turned him in to the FBI, who couldn't find him—

Mr. Brown: I don't believe there is anything in your hypothetical question about that.

Mr. Hogan: I am asking this now.

Mr. Brown: There has been nothing here that shows this defendant knew that this woman turned him in, at that time, not a thing.

Mr. Hogan: I didn't ask if he knew it. I asked Mr. Bugas and he said he did.

The Court: He said that Jean Breese did that, but there was nothing in the record, as I recall, that that information was conveyed to the defendant. If it is, you can point it out to me. I don't recall it.

Q. Well, the fact that he had been apprehended 1693 and the fact that while in prison he wrote a letter and wanted to write a book, telling others how to get a job, wouldn't that indicate a systematized delusion in that individual?

A. I would indicate his self-importance, regardless of his situation, being in a penitentiary, it would indicate his big ideas, his self-importance, and to direct them on to somebody else.

The Court: When was this book written?

Mr. Hogan: It wasn't written. It wasn't written, Your Honor, but he wanted to get out—

The Court: Didn't the defendant testify that he started to write a book on that subject, how to get a job?

Mr. Brown: Yes, he did. He said his manuscript was found out in Glendale, California?

The Court: Was it written before his capture or after

Testimony of Dr. Thomas J. Crice

his capture.

Mr. Hogan: No, I don't know that the book—I believe it was not written.

The Court: It was never published, I know, but didn't he testify that he started to write one.

Mr. Brown: That's what he testified.

Mr. Hogan: That's right.

The Court: Was that before he was captured 1694 or after he was captured?

Mr. Hogan: That was before he was captured.

The Court: I thought you asked the doctor about writing some kind of book when he was in the penitentiary.

Mr. Hogan: No. I asked the Doctor, the fact that he had written a letter to the Bureau of Prisons or the warden to get out of there so he could write a book on that subject, wouldn't that indicate a systematized delusion in the individual.

The Court: Was there any evidence that he wanted to get out to do that?

Mr. Hogan: Yes, sir.

The Court: That letter didn't show that, did it? Let's see the letter. Did the letter say he wanted to get out to write a book?

Mr. Brown: Here is the letter.

(Letter handed Mr. Hogan by District Attorney.)

Mr. Hogan: (Reading) "Mr. Bates: Among my effects in Glendale, California, was a manuscript of a book I was writing previous to my crime. It was, 'The getting of a job—a science.' I have studied that problem carefully and am well informed on it. I would like to do this, establish a placement bureau or at least teach a class here in the ways and means of getting a job. I believe I 1695 could help direct an inmate's efforts once he is released along certain well defined lines that would help him to get a job."

The Court: Teach classes at the institution.

Mr. Hogan: Yes.

Q. I will ask you if this same individual who wanted to teach classes and tell others how to get a job, and had miserably failed in his own field, wouldn't that indicate

Testimony of Dr. Thomas J. Crice

that he had some kind of delusion?

A. It would indicate a false interpretation of his ability or capabilities.

Q. Is that a form of dementia praecox?

A. It may be associated with dementia praecox, yes.

Q. Is it an insane delusion?

A. It is an idea that has no basis.

Q. Is there any—

The Court: Just a minute, I don't think the doctor answered the question. He asked you, was that an insane delusion. Now that can be answered either yes or no. You went off onto something else.

A. I wouldn't say it is an outstanding insane delusion.

Q. What is it?

A. It is more or less of a self-important idea, 1696 egotism, grandiose egotism, associated with an insane condition.

Q. Is a grandiose, self-important individual, a component part or any part of a paranoid type of dementia praecox?

A. Yes, sir.

Q. That's one of the symptoms, is it not, Doctor?

A. Yes, sir.

Q. Has anything been asked you or has anything been said by you in answer to either Mr. Brown's questions today or mine, to change your opinion of yesterday that this man was insane at the time put to you in the hypothetical question?

A. Not at all.

Q. You are still of that opinion?

A. Yes, sir.

Mr. Hogan: You may ask him.

Recross-examination by Mr. Brown.

Q. What form of dementia praecox was he suffering from, Doctor?

A. Paranoid dementia praecox.

Q. Paranoid?

A. Yes, sir.

1697 Q. You told Mr. Hogan and the jury that you

Testimony of Dr. Thomas J. Crice

lay considerable stress on the finding of two juries in Tennessee on insanity. Let's see whether you do that or not, Doctor. I will ask you if you didn't say this: "Justice is diverted by the absurdity of hypothetical questions. Twelve laymen cannot be expected to appraise nicely the degree of responsibility of a paranoiac or a high-grade moron"—

A. Wait a minute—

Q. Let me finish, please. (Continuing) "and the differences of opinion between lawyers and doctors, and doctors and doctors, buttressed, if not directed, by funds from opposed interests, gossiped in the corridors and wrangled in the courts, elevate crime, debase law and prostitute medicine." You said that, did you not?

A. Yes, I said that.

Mr. Brown: That's all.

Redirect Examination by Mr. Hogan.

Q. Do you have an explanation that you wanted to speak out awhile ago?

A. My idea on that question was a criminal insanity, so-called. I further tried to indicate the action of a
1698 criminal and his protection, and I further tried to indicate—to divide insanity from criminology. I further tried to say that insanity was sickness, illness, criminality was not.

Q. Now, Doctor, you have, as Mr. Brown has indicated, written some articles upon the subject of criminal insanity, have you not?

A. That particular one.

Q. And you have some pretty high ideals in your mind respecting devices to liberate persons whom you believe to be hiding behind the cloak of criminal insanity, do you not?

A. Yes. It has been my job for a good many years to try to inform the courts, particularly Criminal Court, what I believed was criminal and what I believed was insanity.

Q. Now, with that premise in mind, do you believe that this defendant in his case is hiding or trying to hide behind the cloak of criminal insanity to escape punishment at the hands of this court?

Testimony of Dr. Thomas J. Crice

Mr. Brown: That's purely argumentative.

The Court: I think it is argumentative. You can ask his opinion as to the condition of this defendant at the time. I think you already have.

Mr. Brown: I think he has several times.

Q. Do you have any opinion, Doctor, about this
1699 defendant's attempt, if there is an attempt, to escape punishment by resorting to the cloak or guise of criminal insanity?

A. I have found nothing in the record that would sustain that.

Q. If you thought he was trying to hide behind that to escape punishment, you wouldn't come in here and testify for him, would you?

Mr. Brown: I object to that. That's purely argumentative.

The Court: I think the question is argumentative, Mr. Hogan.

Q. Who is paying or who is going to pay you for your services—

Mr. Brown: Mr. Hogan made a motion that the United States—

The Court: I believe that requires the same statement to this witness as it did to Dr. Solomon. The defendant filed an affidavit in this case showing that he was a pauper, he had no funds to employ a lawyer to prosecute or defend his case. He asked the court to appoint a lawyer. The lawyer also made the motion that certain doctors selected by the defense be subpoenaed as defense witnesses, and

due to the lack of funds on the part of the defendant
1700 the Government be required to pay their fees. That motion was sustained by the court because the defendant was a pauper. Whatever fee is due to the expert witnesses for the defendant will be paid by the Government as a result of that motion.

Does that correctly state the situation?

Mr. Hogan: That is correctly stated. There is one thing that I wish could be added, that the Government would include in that order the fee of the attorney which it evidently cannot do because there is no basis for it.

Testimony of Dr. Thomas J. Crice

Recross-examination by Mr. Brown.

Q. Now Doctor, with reference to the high ideals, you wouldn't be here. Let's examine this. This is a Kentucky Medical Journal, Volume 38, No. 1, Bowling Green, Kentucky, January, 1940. Now, I will ask you if this article under your signature, wasn't copied verbatim from an earlier article of a very famous psychiatrist in New York, Dr. Foster Kennedy—

A. I borrowed a good deal of his thoughts, yes.

Q. (Continuing) which appeared in Volume 110—

A. And I wrote—

Q. (Continuing) Just a moment—Volume 110, No. 9, February 26, 1938, in the Journal of the American Medical Association.

1701 A. I wrote to Dr. Kennedy, but I do not agree with you and the statement isn't true entirely, that I verbatim copied his report.

Q. All right. Now—

A. Wait a minute, please. I wrote to Dr. Kennedy and asked him if I would be permitted to use some of his matter in an article he wrote in the American Medical Journal. He wrote back and said, "Certainly. Nearly everything I have written in my life I had to borrow from somebody else."

Q. You have that letter, of course.

A. I may have it in my files.

Q. When you are released from here, would you produce the letter to Dr. Kennedy and the letter from Dr. Kennedy, please, sir?

A. If I can find them.

Q. I will ask you, with the exception of the first and second paragraphs, that if your article which you say in discussion is your article, is not copied verbatim from this Journal of the American Medical Association which appeared two years earlier?

A. Not verbatim, no.

Q. All right, let's start. Beginning where I have marked, you have one column of a half page and another three-quarters of a column which was not obtained from this article.

Testimony of Dr. Thomas J. Crice

1702 A. That is not verbatim.

Q. Now, let's see whether it is. Now I will ask you where I have marked "Start"—let's lay this over here and let some of the jury examine it.

Mr. Hogan: No. Let him check his own article.

Mr. Brown: All right, if he wants to check it first.

The Court: I suggest, Mr. Brown, you read what your article shows and see whether Dr. Crice finds any difference in his article.

Q. Where I come to a point that you don't agree, just stop me. (Reading)

"There are three protagonists in law trials in which an alleged insane person is either in the box or at the bar; the judge, the alleged insane person and the doctor. One can look at the problem from all three points of vision. There is an unseen fourth, the public, made articulate by the press.

Our forefathers fought for the recognition of individual rights; Runnymede and Magna Charta, the Bill of Rights, the struggle with the crown, the lopping off the anointed head that bore it, the continuation of that same struggle in America with the victory of the people, the Reform Bill of 1832; the present day liberties of each of us have been bought by struggle and by sacrifice. The Great War was in essence a fight for individualism against suppressing organized government, as presented by Prussia; and only the other day, ten years ago, another struggle"

A. That isn't in this article.

Q. Which one isn't in.

A. You last—

Q. "and only the other day"

A. That doesn't follow here on this page. That doesn't follow here on this page.

Q. "The Great War" doesn't follow that? Just look at it and see.

A. No, your next sentence.

Q. "bloodless but bearing even graver issues for

Testimony of Dr. Thomas J. Crice

civilization than did the Great War"—

A. I don't see that in here.

Q. — "was the general strike in Britain in which the whole work of labor stopped dead."

A. Where is that here?

Q. Now then, you say, "The Great War was in essence a fight for individualism against suppressing organized government."

A. Is that in Dr. Kennedy's?

1704 Q. We haven't gotten to that, doctor. "The Great War was in essence a fight for individualism against suppressing organized government," and in Dr. Foster Kennedy's article it is, "The Great War was in essence a fight for individualism against suppressing organized government." I will ask you if that isn't exactly word for word.

A. I don't see it here.

Q. "The Great War was in essence a fight for individualism against suppressing organized government."

A. Yes, I see it. Beg your pardon. Beg your pardon.

Q. (Continuing) "We have had won for us by these efforts of our forefathers, of our brothers and recently of our own, such an individual consciousness, such a respect for individual rights, that we have rather lost sight of the rights of society as a whole. We have been so glamored by our desire to safeguard the liberty of the person that we have become negligent of the safety of the mass.

Society, in short, in America has been failing to protect itself against rampant individualism, as expressed by the man of violence. During last year, there were over eleven thousand homicides in this country. That is a fifth of the total loss of the American forces sustained through both natural causes

1705 and at the hands of the enemy in nineteen months of first-class modern warfare.

The police force and the law courts are tardy instruments in the apprehension of the perpetrators of the majority of these crimes, but when they have

Testimony of Dr. Thomas J. Crice

been apprehended, we medical men are often made another brake on the slow wheel of justice, and we abet sentimentality of the press by being asked to testify in and out of season to the lack of responsibility of the criminal. Law is an instrument for the protection of society. It is not a clinic."

Now, to save somewhat of my voice that is left, Doctor, I will ask you, when you are excused from the stand, to compare Dr. Foster Kennedy's article, paragraph by paragraph, and your article, paragraph by paragraph, and then report back what differences there are, and if in fact they were not copied verbatim.

Mr. Brown: That's all.

The Court: Now I gather it is your contention, Mr. Brown, from where you started on, the two articles are the same, and if Dr. Crices wishes to make the contention that they are not he can take the stand later. If he doesn't ask to take the stand, it is the fair ruling, I assume, Mr. Hogan, that he does not wish to make that contention.

1706 Mr. Hogan: I think that would be fair.

The Court: You understand that.

The Witness: May I have a statement?

The Court: Yes, sir.

The Witness: This article written by Dr. Foster Kennedy was in keeping and in line with a great deal of my work, and the record doesn't show that line for line was copied. I wrote, as I said a while ago, to Dr. Foster Kennedy and asked him if I could reproduce his article, if I could reproduce it, because it was, I thought, timely and good, and one that I thought would be of some interest. He wrote back a very lovely letter and said he would be glad if I would use any of it or all of it, that the most of his writings he has had to borrow from other men.

Mr. Hogan: Now, Doctor, what is contained in those articles, even assuming that you copied word for word, or verbatim, from Dr. Kennedy, that had to do with these overnight ideas of criminal insanity, did it not, Doctor?

Testimony of Dr. Thomas J. Crice

The Witness: Yes, sir. I would like to further state, I don't see that I committed any wrong. I don't see that I was trying to steal some of Dr. Kennedy's thunder.

Mr. Brown: I haven't accused you of any of that.
 1707 The Witness: Let me explain, will you? I wasn't trying to steal Dr. Kennedy's thunder. I asked for permission and produced it largely as he wrote it, I had some individual lines of my own, and I had a right to do it with his permission, and to point out a criticism upon my part for writing the article, I don't think it is fair at all. I am not the writer and the student that Dr. Kennedy is, I will admit that, and I don't think he has an equal in this country.

Redirect Examination by Mr. Hogan.

Q. Now, Dr. Crice, when Mr. Brown asked you to compare those articles, I thought that he was going to change your view upon one who had twice been adjudicated by two courts as an insane person. Now is there anything in those articles that would change your mind?

A. No, sir.

Q. You still stay by your opinion as to this defendant's insanity?

A. I do.

Q. Those articles notwithstanding?

A. This article isn't written upon the insanity in question.

The Court: Gentlemen, just a minute, one of
 1708 the jurors would like to be excused.

Do not discuss the matter among yourselves, members of the jury, or with anyone.

We will take a short recess at this time.

Mr. Brown: I would like those letters of Dr. Foster Kennedy to be produced too.

The Witness: I don't have them.

The Court: I think the doctor should remain until we reconvene.

A short recess was taken, after which the hearing was reconvened, with the following proceedings:

Testimony of Dr. Thomas J. Crice

Redirect Examination continued by Mr. Hogan.

Q. Dr. Crice, during the recess period, have you had time to compare all the words of your article with the other doctor's article?

A. I have looked over it; yes, sir.

Q. Tell the jury now, whether your article and Dr. Kennedy's article are verbatim.

A. No, sir, it is not. Shall I read?

Q. I don't know that it is necessary to read.

The Court: Would you say, Doctor, that they are substantially verbatim, with some small differences here and there?

1709 The Witness: Judge, I couldn't say that truthfully. I have written here one half page and also quite a number of references on other pages, and in many instances I have inserted what Dr. Kennedy had said. A part of it is my original ideas, opinion, and a great deal of it, of course, was Dr. Kennedy's report which I asked and had permission to use.

The Court: Can it be accurately said that in some instances complete paragraphs are taken verbatim from Dr. Kennedy's article?

The Witness: That's true. That's true.

Q. Now, Dr. Crice, did you or not have occasion to become acquainted with Dr. Brackin who was up here?

A. Yes, sir.

Q. Have you read that report that he, and Dr. Farmer, and Dr. Johnson, and Dr. Love made to the Criminal Court in Tennessee in 1929?

A. Yes, sir, I read that article.

Q. Were you influenced in your opinion of this man's condition as of the time in question somewhat by Dr. Brackin's report and his joint report with other doctors who had occasion to see him?

A. Yes, sir. I thought the report was full and complete, and scientific.

Q. Did it contain logical deductions?

1710 A. Yes, sir. It discussed the question of insanity I thought very plainly.

Testimony of Dr. Thomas J. Crice

Q. And of course, that report was made up long before the indictment of this defendant in this case?

A. That's my understanding.

Recross-examination by Mr. Brown.

Q. I will ask you if, with the exception of the first five paragraphs of your article, Dr. Kennedy's article isn't copied verbatim, with the exception of the first five paragraphs of your article, you haven't copied Dr. Kennedy's article verbatim.

A. Well, that is true. I see no reason why I shouldn't use his article.

Q. I am not arguing with you. I am just asking you.

A. Why are you bearing down on that?

Q. I am not bearing down, Doctor.

A. Why are you making such a big boogaboo about nothing?

Q. You seem to have a sense of guilt.

A. This isn't guilty, writing an article.

Q. Now, I will ask you to refer to your article and ask you further if there is any place in your article
1711 that you give Dr. Foster Kennedy one line of credit?

A. No, I did not.

Q. And I will further ask you if on page 32 of the Kentucky Medical Journal, when you are discussing this article, you don't say this:

"In regard to the jury system, I think it is most obsolete, old-fashioned, and worn-out. The jurors are good men, as I stated in my paper, drawn from the various walks of life,"

and then in the last paragraph of that discussion you don't say:

"I again want to thank the gentlemen for their kind discussion of my paper."

A. It was my paper, my article.

Q. And at any point, you do not mention Dr. Foster Kennedy's name, do you, or even italicize any place in

Testimony of Dr. Thomas J. Crice

your article to show that it was taken from some other article.

A. No, I didn't mention Dr. Kennedy's name. He didn't ask me to in my communication. Now here is a portion here you don't seem to get. Dr. Kennedy said this—this doesn't appear in my article—"A friend of mine, Judge Clarke"—

The Court: Is it within the first five paragraphs?

Mr. Brown: Of his? No.

1712 The Witness: I am trying to point out, Judge, that I did not copy Dr. Kennedy's report verbatim.

Mr. Brown: All right, read that, "A friend of mine, Judge Clarke"—

A. "A friend of mine, Judge Clarke in New Jersey, was lately spoken to sharply in his court by a man with a foreign accent who protested against Judge Clark's ruling on the ground that he, the judge, was unfair in that he was clearly prejudiced in favor of the United States." Is that in my article?

Q. Could you use that in your article? Are you a friend of Judge Clark's?

A. No, I had no reason to use that in my article.

Q. You couldn't use it. You were no friend of Judge Clarke's?

A. It wasn't in the question of the paper.

Q. So you just couldn't use that portion of the article because you knew you didn't know Judge Clarke.

A. That wasn't in the subject, but you said verbatim, and it isn't verbatim.

The Court: Then the explanation is that that part of Dr. Kennedy's article was omitted when you used the paper.

The Witness: This portion, yes, sir, and many others.

1713 Q. Have you any letters from Dr. Kennedy?

A. I have one that I received in reply to the permission to use a portion of his article, but I don't know now whether I could find it or not.

Q. I will ask you to make a search and if you can find any such letter, to produce it. You keep your files, don't

Testimony of Dr. Thomas J. Crice

you?

A. I don't keep all letters, no. I keep a great many.

Q. If you have any such letter, produce it.

A. You imply, though, Mr. Brown, that probably I didn't receive that letter.

Q. I don't imply anything. I am asking if you have the letter to produce it, and I will ask you—

A. I will kindly produce it if I can find it. If I cannot, of course I cannot.

Q. I will ask you if immediately after recess you didn't go up to Mr. Hogan and say this, or this in substance, "Mr. Hogan, I haven't got any such letters. What am I going to do."

A. I did not say that.

Mr. Hogan: And I will back him up.

A. It isn't true.

Q. What did you say?

A. I said, "I had this letter, but I don't know whether I can find it or not." Now I did not say that.

Q. All right, will you make an examination of your files and if you have any letter from Dr. Foster Kennedy, will you please produce it?

A. If I can, yes.

Q. Yes, do your best.

Mr. Hogan: I want him to. I want you to look and if you have it, Doctor, I want you to say so, and if you don't have it—

A. I have sworn on this stand that I received such letter.

The Court: I believe we will go on the principle that if the Doctor finds any such letter it will be produced before the trial ends, if it is not produced you will assume that no such letter was found.

Mr. Brown: That's correct.

The Court: It won't be necessary for the Doctor to come back.

Mr. Hogan: I don't want, if he is not able to produce it, to have an implication that no such letter existed.

The Court: I said that no such letter was found.

Testimony of Dr. Thomas J. Crice

Mr. Hogan: Yes, sir. All right, Doctor.

The Court: Doctor, let me ask you a question.

1715 I didn't get quite clear from some excerpt that Mr.

Brown read, what was your opinion as shown by that excerpt that medical testimony on the question of sanity or insanity based upon a hypothetical question and referring to a previous time was not of much value to a jury?

The Witness: I obtained that information from Dr. Kennedy.

The Court: I say, was it your view that it was not of much value?

The Witness: No, it was not. I wanted to use that information from a man who was a great student and a great scholar.

The Court: I mean, did you put that in your article that it was not of much value to a jury?

The Witness: According to Dr. Kennedy's—

The Court: Wasn't it your article?

The Witness: I wrote the article, yes, sir.

The Court: You put it out under your name?

The Witness: Yes, sir.

The Court: And put that statement in it?

The Witness: That statement was in it, but it was borrowed from Dr. Kennedy.

The Court: I mean, you put it out as your statement, did you not?

The Witness: Oh, yes, particularly in reference, Judge, to criminality, to protection of crime.

The Court: Is the excerpt there? Maybe it better be read.

Mr. Brown: "Psychiatry cannot properly work through the existing criminal codes. Justice is diverted by the absurdity of hypothetical questions. Twelve laymen cannot be expected to appraise nicely the degree of responsibility of a paranoiac or a high-grade moron; and the differences of opinion between lawyers and doctors, and doctors and doctors, buttressed, if not directed, by funds from opposed interests, gossiped in the corridors and wrangled in the courts, elevate crime, debase law and

Testimony of Dr. Thomas J. Crice

prostitute medicine."

The Witness: Judge, may I say—

The Court: You can state it to the jury, Doctor. They are the ones that are going to consider it.

The Witness: I had no reference to the tribunal or courts in this article at all. It was the crimes that were committed in various places, and it seems that by wrangling of lawyers, that it was hard to get the facts to well meaning jurors.

The Court: What I was particularly interested in, was that your view at the present time as stated in your article of several years ago, or did you make that statement 1717 in that article without meaning it to be your views?

The Witness: That was not my original view, Judge.

The Court: Was it your view at the time that article was written?

The Witness: I was impressed by it.

The Court: Was it your view?

The Witness: It was in a measure, yes.

The Court: You mean you have changed views since then?

The Witness: I have changed my views often in medical questions.

The Court: When was that article written?

Mr. Brown: It was published January, 1940, and it was apparently delivered at Bowling Green at the meeting of the Kentucky Medical Association.

The Court: Are there any more questions of this witness?

Mr. Hogan: Yes, sir.

Redirect Examination by Mr. Hogan.

Q. As I believe you tried to explain a moment ago, those views had reference particularly to those overnight cooked up pleas of insanity, did they not, Doctor?

1718 A. Yes, together with crimes committed against young children that I pointed out in my paper.

Q. Where there was a background of legal adjudication at the hands of two juries and an incarceration in an

Testimony of Dr. Thomas J. Crice

institution for the insane for eleven months, and another incarceration or stay for a period of twelve weeks, that is not the type of insanity you refer to in that article, is it, Doctor?

A. No, sir.

Q. You respect the judgment of the courts and of the juries, do you not?

A. Absolutely.

Mr. Hogan: That's all.

Mr. Brown: That's all.

Mr. Hogan: The defense rests at this period.

Mr. Brown: All right, Your Honor, we will proceed immediately.

1719 DR. DAVID GALLOWAY called as a witness in behalf of the Government, in rebuttal was duly sworn, examined and testified as follows:

Direct Examination by Mr. Brown.

Q. State your name, please, sir.

A. David Galloway.

Q. Where do you live?

A. Western State Hospital near Bolivar, Tennessee.

Q. What is your profession?

A. Physician.

Q. How long have you been practicing as a physician?

A. I graduated in medicine in 1909.

Q. Since then have you continuously followed your profession?

A. I have, yes.

Q. What official position do you now hold with the State of Tennessee?

A. Superintendent of Western State Hospital.

Q. As Superintendent of the Western State Hospital, do you have all the records of the Western State Hospital pertaining to any present or former patients?

A. I do.

Q. I will ask you to examine that folder and tell

Testimony of Dr. David Galloway

1720 the jury whether that is the original record of the Western State Hospital pertaining to the defendant, Thomas H. Robinson, Jr.?

A. This is the record on file when I took charge of the hospital.

Q. Now, do those records, Doctor—are they made in the ordinary course of business concerning the business with which the Western State Hospital is engaged?

A. Yes, I take it, as entered and examined and records are added to it as the case progresses.

Q. And do the records, as they indicate the date, are they made contemporaneously with the act that they are supposed to indicate?

A. They show the date at which the examination was made.

The Court: It is the regular course of business of the hospital to make such records?

Witness: It is.

Q. Now, Doctor, that is all.

Mr. Brown: I just wanted to introduce this record through him.

Q. Have you examined this photostatic copy, and can you tell the jury—I don't want to introduce the original record but I want to introduce a photostatic copy—can you tell the jury whether or not the photostatic copy

1721 I hand you contains a complete copy of all records on file in the Western State Hospital?

The Court: You mean pertaining to Thomas H. Robinson Jr.?

Mr. Brown: Yes.

Q. (Continuing) Pertaining to Thomas H. Robinson, Jr.

A. (After looking through file) There is no doubt about it in my mind.

Mr. Brown: I would like to introduce the original but I would like to substitute this photostatic copy as Government Exhibit No. 81, for identification.

The Court: I suppose there is no objection to the photostatic copy being filed?

Mr. Hogan: Not at all, Your Honor.

Testimony of Dr. David Galloway

(The above document was handed to the Reporter, marked Government Exhibit No. 81 for identification.)

Mr. Brown: That's all.

Cross-examination by Mr. Hogan.

Q. Is that a complete record?

A. So far as I know. I have only been there two months and that was the record that was there when I took charge of the hospital.

Q. What kind of a hospital is that?

1722 A. State Hospital for the Insane.

Q. What is the business of the hospital? What do they do there?

A. They care for the insane patients for the Western Division of Tennessee.

Q. It is an institution in which insane persons are kept?

A. That is right.

Q. They try to keep them there so long as they are insane?

A. Of course.

Q. You don't like to release them when they are insane, do you?

A. Well we try to do the best we can for them and try to get them back into society safely, if we can.

Q. Well so long as they are insane, you keep them there, don't you?

A. Yes.

E. W. COCKE, was called as a witness in rebuttal by the government and, after having been first duly sworn, was examined and testified as follows:

1723 Direct Examination by Mr. Brown.

Q. State your name to the jury?

A. I am Dr. E. W. Cocke.

Q. Where do you live, Doctor?

A. I live in Memphis, Tennessee.

Testimony of E. W. Cocke

Q. How long have you lived in Memphis?

A. For the past seven years.

Q. What profession do you follow, Doctor?

A. I am a physician.

Q. Of what schools are you a graduate?

A. University of Tennessee.

Q. When did you graduate from the University of Tennessee?

A. In 1911.

Q. Have you followed continuously your profession since 1911?

A. I have.

Q. Would you tell briefly to the jury your experience since 1911?

A. I graduated in 1911 and had the usual general hospital internship; and in 1914 I became Assistant Physician at the Western State Hospital, at Bolivar, Tennessee. I remained in that capacity for four years, and then I became Medical Superintendent in 1918 and I remained **1724** in that capacity until 1936. Now from 1932 to 1936

I was Commissioner of Institutions for the State of Tennessee, having under my supervision the penal and charitable institutions. At that time I still remained as Superintendent of the Hospital but took this position only temporarily. However, I remained there four years. I resigned and entered private practice in Memphis, Tennessee; and I have now and direct a hospital there, a 50-bed hospital, which is an open hospital, but I have a majority of mental and nervous patients all the time, and I direct the policies of the hospital.

Q. For how long, Doctor, have you specialized in the care and treatment of nervous diseases and mental diseases?

A. Since 1914. I might add that I am a member of the Tennessee Medical Association, the Shelby County Medical Association, and Shelby County is the County in which I live. I am a fellow of the American Psychiatric Association; and I am a member of the American Board of Psychiatry and Neurology.

Q. There has been introduced, or identified, but it has not been offered yet, certain records of the Western State

Testimony of E. W. Cocke

Hospital. Now here is the original and here is the copy, and you may examine both and see which you had
 1725 rather use. I will ask you if you were in charge of the Western State Hospital at Bolivar, Tennessee, during the year 1930 when the defendant, Thomas H. Robinson Jr., was admitted to that hospital?

A. I was.

Q. Were you in charge continuously during the time that Robinson was in that hospital?

A. I was.

Q. Would you examine your records, Doctor, and give the jury the date when he was admitted to the hospital and the date when he was discharged from the hospital?

A. If you will pardon me, I have not referred to these—this patient was admitted from Davidson County on May 25, 1930, having been transferred from the Central State Hospital at Nashville. He remained in the Western State Hospital until August 24, 1930.

Q. At the time of his admission, did he come from the Central State Hospital?

A. Yes, he was transferred from the Central State Hospital.

Q. Did you receive, along with the patient, the records of the Central State Hospital?

A. I did.

Q. You, of course, knew the diagnosis of the Western State Hospital?

A. Our Hospital? The Western?

1726 Q. No, I mean the Central State Hospital?

A. Yes.

Q. What was that diagnosis?

A. He was diagnosed as a dementia praecox case at the Central State.

Q. Was there any classification of that, Doctor, as received by you from the Central State Hospital?

A. I believe not.

Q. Would you tell the jury if in the opinion of yourself and the members of your staff as reflected by the records, if you agreed with the diagnosis of the Central State Hospital?

Testimony of E. W. Cocke

A. We did not agree with the records of the Central State Hospital. Our staff diagnosed him as a psychopathic personality type—I guess that has been brought out.

Q. What do you mean by a psychopathic personality?

A. A psychopathic type of a person is an individual that is ill-equipped from birth to meet the demands of his environment. It is not like a mental defectiveness but it affects intellectual aspects.

Q. With reference to psychopathic personality, does that in your opinion denote a psychosis of any kind?

A. It does not. A psychosis means a mental disease—a diseased mind. Dementia praecox, that is a
 1727 psychosis. We did not think that he was suffering from a psychosis.

Q. Would you refer to your records there and, refreshing your recollection, tell the jury during his stay there any incident that you want to call to the attention of the jury; and give the jury the diagnosis that you made when he was released from the Western State Hospital?

A. (After looking through the record) Mr. Brown, if you will ask me again?

(The last question was read to the witness.)

A. When he was referred to or transmitted to this hospital I was quite familiar with this case. I knew Tom Robinson's father very well in Nashville, having come in contact with him many times. He was a very fine gentleman. I discussed this case at length with him, many times. He was transferred there and, if I remember correctly, he was placed in our receiving building and he was assigned various duties after examination. He was dissatisfied a great part of the time; he was hard to please. He would not come under discipline and it was rather difficult for us to control him and do for him. We kept him there until the date of this discharge; and the reason of the discharge, I
 1728 presume, was that a short time before, a week, ten days or two weeks, we had an occasion to take away from him his ground privileges. We let them go where they please around the place, but not to leave the grounds. I had been informed that he had been going to town, a town of about one thousand inhabitants. We for-

Testimony of E. W. Cocke

bid the patients going to town unless accompanied by an attendant. During the time he was working around the hospital and, if I remember correctly, there was construction going on and I think one of the foremen had him keeping time for some of the men there. Well, anyway when we took away his privileges we confined him to the ward. Very soon after that his people came down, his father and mother and became dissatisfied because we had taken his privileges away from him, and therefore they demanded that he be released. Now I talked with them at length—I talked with his mother, and I talked with his father—I felt that they were doing the wrong thing by taking him away. Mind you, we had diagnosed him as a constitutional psychopath and according to that diagnosis he was not insane and I really did not have any right to hold him there after such a diagnosis, but I felt in view of his past history that he was more or less a menace to society, a menace socially, he had been in trouble; and I felt like he should be confined

and kept there. And with all of my trying to persuade Mr. Robinson, he took him away. He said his wife wanted to take him home and that he would just have to do it. And I told him what I thought would happen, that he would continue to get in trouble, but he left and before he left I took a statement which I required Mr. Robinson to sign, in a way assuming the responsibility. If anything happened we wanted to be that much in the clear and we should not have kept him anyway. And he signed this statement and he took him away and that is the last time I saw Tom Robinson.

Q. Now, will you refer to the statement which you have there and read it to the jury and then read any other letter that you desire to?

A. This is a statement that Mr. Robinson signed:

"I, Thomas H. Robinson, Sr., of Nashville, Tennessee, father of Thomas H. Robinson, Jr., a patient in the Western State Hospital, Bolivar, Tennessee, and who was transferred from the Central State Hospital, Nashville, Tennessee May 25, 1930, visited the Western State Hospital this date and conferred with

Testimony of E. W. Cocke

Dr. E. W. Cocke, Superintendent of said institution regarding the advisability of removing Thomas H. Robinson, Jr. from the hospital as a patient.

1730 "Dr. Cocke's opinion is that the boy should remain in the hospital because he feels that he is an institutional patient. He feels after observation and examination that the boy is psychopathic and that from his experience with such cases he feels that if he should be taken away that the probability is that he will be a menace to society and that he will continue to cause me a great deal of trouble. He states that he is unstable and not capable of going out into the world and assuming the responsibilities of life. Dr. Cocke thinks that he should still be confined in this or some other institution for mental diseases. Dr. Cocke further believes that our undue interest in our son makes it rather difficult to continue with him as a patient, so long as we feel as we do."

We felt like he was not being given the proper consideration. (Continuing):

"I fully realize the circumstances under which the patient was transferred from the Central to the Western State Hospital. The record of the Central State Hospital states that he is suffering from a mental disease known as schizophrenia and upon that record the criminal case against him in Davidson County Criminal Court was nolle prossed as the result of 1731 the finding of the Central Hospital. After the case was nolle prossed the patient was recommitted under the Insanity Act of 1919 to the Central State Hospital and under special dispensation at the earnest request of myself the Commissioner of Institutions transferred him to the Western State Hospital.

"After due deliberation upon the part of myself and family and Dr. Cocke's opinion notwithstanding I have decided to remove my boy from the hospital and am perfectly willing to assume full responsibility regarding his future and general welfare. I agree, regardless

Testimony of E. W. Cocke

of what might happen in the case of my boy, to assume every responsibility and not in any way hold the Western State Hospital responsible for anything that might arise later and, furthermore, will not expect any help from the Western State Hospital if my son gets into any more trouble, unless the Western State Hospital would feel disposed to come to my rescue.

1732 "I fully appreciate the position taken by Dr. Cocke and I haven't anything but the very best feeling toward him. I am aware of the fact that my son has been well cared for since he has been in the Western State Hospital and that every courtesy has been shown him. I further feel that he has been especially well treated and that more things have been done for his pleasure and general welfare than for the average patient confined therein. Dr. Cocke has been frank and honest with me in every transaction for which I sincerely appreciate. I am pursuing this course because I personally feel, notwithstanding professional opinion, that it is best that I take him out and give him a position and give him another trial.

(Signed) Thos. H. Robinson Sr."

Q. Now, was he released from your institution at that time?

A. He was, on that date.

Q. And with reference to the diagnosis, that was made, Doctor, I will direct your attention to that and ask you to tell the jury what diagnosis was made at the time of his release?

A. His diagnosis was 22d, without psychosis, but with a psychopathic personality.

Q. Now did you feel and do you still feel that—what does 22d mean?

1733 A. That is a classification that is used by the American Psychiatric Association—we usually refer to those numbers. 22d means a person with psychopathic personality, without psychosis.

Q. Did you feel at that time, and do you still feel that at the time of his release from the Western State Hospital

Testimony of E. W. Cocke

that, although not insane, he was a menace to society?

A. I do.

Q. Will you refer to your records with reference to the letter of September 4, 1930 and read that letter to the jury?

A. Now this is a letter dated September 4, 1930, to Capt. R. H. Lyle, Commissioner, Department of Institutions, Nashville, Tenn; I wrote him:

“Dear Mr. Lyle:

“In re: Thomas H. Robinson Jr.

“You will doubtless recall all particulars concerning this case.

“I am herewith enclosing you copy of his complete history, also the document signed by Mr. Thomas H. Robinson Sr., without going into details you will recall that this patient robbed two houses and obtained several thousand dollars worth of jewelry. He was
1734 ordered sent to the Central Hospital by the Davidson County Criminal Court and Dr. Farmer reported that he was a case of dementia praecox. The result of this examination was the cause of the case being nolle prossed. You will recall that there was some trouble in Central Hospital regarding this case and because the parents were dissatisfied you very kindly ordered the patient transferred from the Central to this hospital, after he had been recommitted to the Central Hospital according to the insanity act of 1919.

“You will note from the summary the general attitude of the patient and the trouble we had with him. When I ordered him confined to the ward after breaking many rules his parents immediately came down and demanded his release. Personally, I was very glad to release him. You will note from the statement signed by Mr. Robinson we recommended that he stay here and he took him against our advice. That's the great trouble with the boy, he has too much father and mother. I predict the boy will be in penitentiary before a great while.

Testimony of E. W. Cocke

1735 "When the patient was received into this hospital we extended him and his parents who accompanied him all the courtesies possible. We gave him outside privileges and he violated many rules.

"Dr. Farmer diagnosed the case Dementia Praecox, but the unanimous opinion of our staff is that he is one of those constitutional psychopathic personalities, the type that will commit crime. We were of the opinion that he was not legally insane—

Q. (Interrupting) That he was not legally insane?

A. Yes, not legally insane. (Reading):

"He knows right from wrong as any normal person would, but he is just one of those types that cannot resist temptation of doing wrong and committing crimes. I insisted on Mr. Robinson keeping the boy here. I felt that we were giving him good advice, but he thought otherwise. It seems that they won't stand for the boy to be disciplined and without discipline or institutionalization the boy will never make the grade.

"I felt that I should write you giving you this information because your attention might be called to the case later on and you would be in position of discussing the matter intelligently.

"Yours very truly,

"E. W. Cocke, M. D. Supt."

1736 Mr. Brown: Now I want to file this exhibit that has already been identified as Government Exhibit No. 81.

(The document referred to was handed to the Reporter and filed with the record.)

Mr. Brown: That's all.

Cross-examination by Mr. Hogan.

Q. I believe you said a minute ago that you knew Thomas H. Robinson Sr.? The father of this boy?

A. I did.

Q. Over what period of years had you known him?

A. I had known him several years. I had met him in

Testimony of E. W. Cocke

Nashville. I visited Nashville frequently, which is the capital of the State. I would go there on business and I would see Mr. Robinson. He was a long time connected with a bridge concern there and we directly or indirectly had business at times with them, etc.

Q. Was Mr. Robinson in the business of a bridge engineer?

A. Yes, sir.

Q. With the Nashville Bridge Company?

A. Yes, sir.

Q. I believe he was considered one of the best bridge engineers in the South, wasn't he?

A. I understood that he was a very competent engineer.

1737 Q. He was a man that never got in any trouble, was he not?

A. I never heard of it.

Q. Well you would have heard of it by having business contacts with him, wouldn't you?

A. I think I would, yes.

Q. And you didn't see Tom Jr. until you saw him there at Bolivar, Tennessee?

A. Until he was transported there to that institution I do not think I ever saw him before.

Q. What do you describe or what do you define the term psychopathic personality to be, or constitutional psychopathic?

A. Well I feel that that it is a rather broad condition. They are a very anti-social type of people. As I have said to Mr. Brown, I think a psychopath is an individual who is from birth ill-equipped to meet the demands of society.

Q. I didn't understand you?

A. I say that I think from birth they are psychopathic and that they are not able to meet the demands of society, etc. They are not feeble-minded. They are intelligent. They use poor judgment. They are unstable. They are

1738 anti-social. They are usually getting into some kind of trouble all the time, one way or another.

Q. You mean as kids?

A. Yes, I mean from puberty.

Testimony of E. W. Cocke

Q. Kids who steal dimes from the table or steal petty money to go to the picture shows in early childhood?

A. Yes. They are forever in trouble, all the way along.

Q. On up through childhood?

A. All through life.

Q. Are these psychopathic personalities or constitutional psychopaths sick persons?

A. Well that is a broad question. They are certainly not normal individuals. I think we might say that anybody that is not normal is abnormal or he is sick in some way. He certainly is not a normal individual, by any means.

Q. Then, if he is not normal, there is something wrong with him?

A. That is right.

Q. He is, maybe, sick?

A. Well you know the word "sick" covers a lot. If you say a person is sick you have got to know what he is sick of.

Q. Sick of mind?

1739 A. Well, he is not mental. They do not have mental deterioration. It is not a mental disease. It is a personality difficulty there. He is constantly in trouble all the time.

Q. Well now there are only two ways that I know he could be sick, sick of mind and sick of body.

A. I would not say he was sick of mind.

Q. Would you say that he was sick of body?

A. I say that they are incapacitated to meet the demands of society.

Q. Well a man has a will and a conscience, does he not, Doctor?

A. Yes.

Q. He is governed by his willpower, isn't he?

A. Well, more or less yes, he is.

Q. Now leaving that line for just a moment, what do you denote the term "psychosis" to be?

A. Psychosis is just like you would say a man is sick. He has got a mental disease. There are many types of mental diseases. Psychosis means that he is sick mentally.

Q. What does the term "psychopath" mean?

Testimony of E. W. Cocke

A. Well a general unstableness.

1740 Q. Does it mean a person of a psychopathic temperament?

A. Well, there is a psychopathic trend.

Q. Then if a psychopathic is a mental disease, then a—

A. (Interrupting) Wait a minute. It is not a disease.

Q. Well what is it then?

A. They are unstable individuals?

Q. Well is psychopath a disease?

A. It is a psychopathic trend. A mental trend.

Q. A trend toward a mental disease?

A. Yes, bordering on that.

Q. Now you said a moment ago that these psychopathic personalities or constitutional psychopaths are born that way?

A. That is my opinion.

Q. Do they ever recover?

A. I have never seen one recover.

Q. If one had recovered, then you would admit that your theory would be incorrect?

A. I would.

Q. Then if this Tom Robinson Jr. has recovered, then your diagnosis in 1930 was incorrect?

A. That is true.

1741 Q. Now was there anything—you did not want him to be removed from Bolivar, did you, Doctor?

A. I thought it was inadvisable. I had known as I have said, Mr. Robinson Sr.—there was a personal feeling in the matter. I really wanted to do something for this boy and for his father and mother.

Q. You did not think he was insane, did you?

A. That is right and, as I said, I had really no right, legal right, to continue to keep this boy there. It was just more or less I was straining a point to do it, according to the diagnosis of our staff members and my personal feeling about it.

Q. You were operating, of course, an insane institution?

A. Correct.

Testimony of E. W. Cocke

Q. And yet you wanted to keep, over the objection of his father, one whom you felt was not insane?

A. I felt that the boy needed that hospital institutional care.

Q. Now isn't this true, Doctor, that the term "psychopathic personality" is an unsatisfactory and unscientific diagnosis because there is no agreement on the classification of the different types of psychopathic or abnormal personality?

1742 A. There are types of definitions as to a psychopathic personality. Many different words they use to express but after all it is all boiled down to just about one thing and they can use as many words as they choose. It is an unsatisfactory definition to try to give.

Q. You admit that?

A. I admit it.

Q. I will ask you this question. Where are you now located, Doctor?

A. At Memphis, Tennessee.

Q. Are you operating an institution there now?

A. No, I have one institution there that is operated by another party who owns it but I keep my patients there and I direct the policies of that institution.

Q. I believe that Kraepelin, the father of modern psychiatry, gave these individuals, these constitutional psychopaths, or unstable personalities, as you called them, the term moral imbeciles? Is that right?

A. Yes, he called it that. I think if he had have lived longer he would have changed his mind.

Q. He considered them lacking in the emotional sphere; did he not?

A. Yes, he felt that they were emotionally unstable.

Q. Didn't he consider them blind to the welfare
1743 of others?

A. He perhaps did.

Q. There are a lot of subgroups or headings in this term "psychopathic personality"?

A. Yes, there are a lot of them.

Q. Pyromaniacs, kleptomaniacs, and many others?

A. That is true. And chronic alcoholism, that might

** Testimony of E. W. Cocke*

* be included in there.

Q. Now, Doctor, aren't there certain mental characteristics, and I emphasize "mental", that occur with such frequency in the cases of psychopathic personalities as to be almost pathognomonic.

A. Pathognomonic.

Q. Yes, pathognomonic of the disease?

A. Will you read that again to me, please?

Q. There are certain mental characteristics that occur with such frequency in the cases of psychopathic personalities as to be almost pathognomonic of the disease?

A. Well now, we have this that we have not discussed yet, the classification of psychopathic—

Q. (Interrupting) Well will you answer yes or no?

A. Yes, there are certain pathognomonic symptoms.

Mr. Brown: Now you may make your explanation.

A. (Continuing) But I would like to say this to
1744 you, that we have two classifications that we use today, a constitutional psychopathic personality with psychosis and one without the psychosis. Many times we find a psychopath who has a psychosis and it is up to us to try to make that differentiation.

Q. Well, is it possible to have a psychopath without a psychosis?

A. Yes.

Q. And you say that is true?

A. A psychopath without psychosis?

Q. Yes?

A. Indeed.

Q. Aren't medical experts in disagreement on that?

A. No, they are not. It is adopted by the American Psychiatric Association, those two classifications.

Q. Well, aren't the medical experts in disagreement about that?

A. Medical experts and medical men will disagree on anything. It is one doctor's opinion against the other.

Q. Medical science is not an exact science?

A. That's true.

Q. Now, most men are guided by some mysterious force, are they not?

Testimony of E. W. Cocke

A. I beg your pardon?

1745 Q. Most men are guided by some mysterious force?

A. Well, I don't know. I just don't know whether I could answer that question or not. Mysterious force? Most people are guided by one force or another but I don't know of any mystery about the thing. "Mysterious force" I don't like that term.

Q. You say you don't like that term?

A. No. If you would give me a different sort of a term there I might get on to it better.

Q. Suppose I tell you that I am using your own term that you used once before, would you still say you don't like it?

A. No, I might have used it.

Q. You like it a little better, now, don't you?

A. Well I don't know that I would. I think probably I was wrong then.

Q. "The individual with a psychopathic personality seems to be unable or unwilling to use his conscience as does a normal person." Is that your view?

A. Yes.

Q. And that was your view 13 years ago, too, was it not?

A. It might have been.

1746 Q. These psychopathic personalities have an abnormal, emotional reaction, do they not?

A. Yes they do. Unstable emotionally.

Q. You see these patients not only speak in the most brutal terms of their own parents, even threatening to kill them when they secure their liberty, but also show an entire absence of affection when their parents visit them in state institutions?

A. Many times.

Q. That's an abnormality, isn't it?

A. Yes, it is an abnormality.

Q. It is a symptom, isn't it, Doctor?

A. Well it is a characteristic symptom, yes, of an unstable person.

Q. It is a deluded idea, isn't it?

Testimony of E. W. Cocke

A. I wouldn't say it is a delusional idea.

Q. What is a delusion?

A. A false imaginary situation, and a false imagination of an imaginary thing.

Q. Well wouldn't an idea toward a parent, a harmful idea, be an abnormal idea?

A. Well it certainly is not normal. You know, to commit crime is not normal.

Q. There is something wrong with him, isn't there?

1747 A. To commit crime he is not normal. There is something wrong. There is no doubt about that.

Q. He is sick mentally?

A. No, I would not say he is sick mentally.

Q. Well if there is no evidence of a disease of the body—

A. (Interrupting) He has no disease of his mind now. He is all intellectually a misfit. He is emotionally unstable. He lacks judgment. He has no consideration for other folks—but that doesn't mean he is sick mentally. I am trying to confine my statements to mental disease now.

Q. He is out of gear, in other words?

A. Yes, he is out of gear.

Q. His mind is out of gear?

A. Don't make me say his mind is out of gear. I am testifying as scientifically as I know how to. And I want to say that he is not, in my opinion—of course I could be wrong—I don't think then that he was suffering from a mental disease.

Q. We are talking about the mind now. There is an objective mind and a subjective mind. You know that to be true, do you not?

A. Yes.

Q. Now what does the subjective mind do?

1748 A. Well it is very difficult to say what the subjective mind does. I think you have got to combine both objectives and subjectives to get anywhere.

Q. Well, that's true. The subjective mind formulates the idea. That is right, isn't it?

A. That is right.

Testimony of E. W. Cocke

Q. And the objective mind carries those ideas into action?

A. That is right.

Q. Now, if the subjective mind formulates an abnormal idea and the objective mind is persuaded by the subjective mind—

A. (Interrupting) You are right.

Q. And carries the perverted idea into action—

A. (Interrupting) That is right.

Q. (Continuing) There is a lack of coordination between those two minds, isn't it?

A. Well it is in many respects, yes.

Q. In the normal person the subjective and objective mind are coordinated or stabilized?

A. That's true.

Q. In the normal person the objective mind serves as a braking power upon the perverted or distorted ideas formulated in the subjective mind, and prevents
1749 the distorted or perverted ideas from being put into action. Now, that is the normal person. Do you agree with that?

A. That is right.

Q. In the person who is not normal, the subjective mind formulates distorted ideas, perverted ideas, wild ideas, grandiose ideas, and the objective mind, not being in coordination, not having the brakes on, permits these ideas in the subjective mind to override the willpower and be put into action?

A. I accept that.

Q. Then you have a person who is wrong and out of gear?

A. He is out of gear.

Q. Then you medical men get into disagreement as to how to type it?

A. Unfortunately we disagree many times.

Q. You may, as one medical expert, type him as one type of individual such as a psychopathic personality, and another medical man may disagree and classify him as a dementia praecox?

A. That is quite true.

Testimony of E. W. Cocke

Q. So now the fact that you diagnosed Tom Robinson Jr. in 1930 as a constitutional psychopath or psychopathic personality does not mean that your judgment
 1750 was infallible,* does it?

A. That is true.

Q. You could have been wrong?

A. I could have been but I don't think I was.

Q. You honestly believe that you were right?

A. I do.

Q. Now, did you have anything, any history, of Tom Robinson's case when you so diagnosed him, to tell you that he had been a petty thief in his early childhood?

A. I did.

Q. What had he stolen?

A. Oh petty—now we had the history of this boy, as I remember this case, and I remember pretty well about it—Mr. Robinson talked to me quite a lot personally. My sister worked up this case—

Q. (Interrupting) Now just answer my question. What had Tom Robinson Jr. in very early childhood stolen?

A. I won't say about that. I don't recall any petty stuff.

Q. He had not stolen small amounts to go to the picture show, etc.?

A. I don't think I ever heard that.

Q. You had nothing in your history that told you that before he was 15 years of age he had been other-
 1751 wise than a normal child, had you?

A. I don't think so; not that I remember. These records I have not looked over for a long time, but I don't think so.

Q. So it was not hereditary in the strictest sense then because any actions that were not normal did not manifest themselves until after he was beyond 15 or 16 years of age. Isn't that true?

A. I think that is true. I think from a hereditary standpoint, if I remember, that Tom's mother was a very nervous type of person. I was told that by Mr. Robinson himself.

Q. Now a moment ago I asked you about Mr. Robin-

Testimony of E. W. Cocke

son Sr. and you said that he was a good business man and—

A. (Interrupting) That is my understanding.

Q. And that he had never been in any trouble?

A. Oh, not that I know of.

Q. And his mother had never been in any trouble?

A. Oh no, but she was just a nervous type of individual.

Q. Now we had a woman juror to get pretty nervous here the other day and we lost her. Nervousness does not necessarily denote heredity, does it?

A. No. No.

1752 Q. Therefore, from what you knew and gathered, there was nothing about Tom Robinson's life that indicated to you that either his father or his mother were unstable except as you have said his mother was nervous?

A. That's right.

Q. Therefore, there was nothing by which you could be guided or base your opinion on that in his early childhood there was any abnormality in Tom Robinson Jr.?

A. I don't think so.

Q. So therefore, with that in view, wasn't your psychopathic personality diagnosis improper?

A. Unfortunately, sir, these cases are overlooked in early life. This might have been one that was overlooked. It might not. I feel like if they were found in early life, which they should be, they ought to be right then confined in some institution. I think if you have a paper there that I wrote, I think I said that they ought to be placed in a separate institution.

Q. All right. Now let's see. You said, "If they (meaning psychopathic personalities) are carefully studied, it will be found that the conflict with the law began at a very early age in a series of petty delinquencies, each trivial, it may be, in itself, but at the same time, serving as valuable indicators of what the future

1753 of the individual will be."

A. Yes.

Q. You didn't have any history of any petty thievery,

Testimony of E. W. Cocke

did you, Doctor?

A. No, that's true. But we can't say that every case will be a pattern case. We can't do that.

Q. But you said if they are carefully studied it will be found that the conflict with the law began at a very early age in a series of petty—

A. (Interrupting) I do feel that way about it, if it is carefully studied.

Q. Did you carefully study this boy?

A. I don't know that we went that far along.

Q. Do you mean to say that you made an opinion, or formulated an opinion based upon a careful study?

A. We felt he was such a Pathognomonic trend that you went through a while ago, the symptoms were so outstanding that we didn't have to go that far back.

Q. You took a chance, in other words, about your diagnosis being correct—

A. (Interrupting) The symptoms were so outstanding.

Q. But your diagnosis has been exploded or proven incorrect when you admitted a moment ago that if
1754 this boy had been restored you would say that you made a wrong diagnosis?

A. I would say that I had made a wrong diagnosis, if he has been restored.

Q. Assuming that he has been restored, and he is of record in this court as sane, would you say your diagnosis was incorrect?

Mr. Brown: Well now wait a minute. I am going to object to that. The doctors have not said that he was restored. I think they have said that he is sane now and this witness says that he has always been sane.

Mr. Hogan: I think it is a fair question.

The Court: Well I think the question would be whether or not this man admits he has been restored. Somebody else may say he has been restored and this witness may say he has not. I think this witness is entitled to his own opinion. If this witness feels in his opinion that this man has been restored he may be wrong, but because somebody else thinks he has been restored does not mean he thinks so.

Testimony of E. W. Cocke

Q. Well, Doctor, have you seen Tom Robinson Jr. since 1930 except today?

A. I have not.

Q. And you haven't had any opportunity to make any diagnosis?

1755 A. I have not seen him.

Q. So that you cannot, from this witness stand, say whether there has been any change in him?

A. I can say this, that I still maintain from the record and from my observation of him there that he is a psychopathic personality and is not insane and if he is not insane he has never recovered, because he has never been insane.

Q. Then if I understand you correctly, these psychopathic personalities are hereditary abnormalities?

A. No. We can't prove anything as hereditary. We have got a lot of theories.

Q. Then you back up on that, do you?

Mr. Brown: He never said anything like that.

A. We have got a lot of theories but we can't prove anything as hereditary.

Q. Didn't you write, "The problem of heredity is an additional feature of this condition that will require the most careful study in the future"?

A. I expect I did. I have not looked at that paper in a long time and I have forgotten what I did say, but we change our opinions so much that I might have said that and have changed my mind now.

The Court: Give him the paper and the circumstances under which he may have made such a statement.

1756 Q. The paper I am reading from is a paper purported to have been authored or prepared by you and read in section on mental hygiene, Tennessee Conference of Social Work, Memphis, Tennessee, March 5-7, 1930. Does that refresh your recollection.

A. I think I wrote the paper but I have forgotten just what I said.

Q. Well, to refresh your recollection, didn't you say this in that paper, "While every person is entitled to any

Testimony of E. W. Coker

operation for a defect which caused him to deviate from the physically normal, it is useless to expect that such operations or any other procedure, surgical or medical or spiritual, available to the present generation, will effect a cure." Now does that recall your statement?

A. That's right.

Q. "The very nature of the condition seems to spell hopelessness, as far as a transforming change is concerned—

A. (Interrupting) That is right.

Q. (Continuing) And the best that we can hope for is to guard the individual from his own warped and twisted nature and the community from the constant assaults which he would make on its peace were he at liberty."

A. I still think that.

1757 Q. Therefore you term a psychopathic personality as a hopeless, incurable personality?

A. I do.

Q. "Looking at the psychopathic personality from this standpoint of hopeless incurability, the only logical treatment is segregation in a special institution for life, which proposition has been made by a number of our foremost students of this particular type of criminal." Now you said that, didn't you?

A. I did.

Q. Segregation you said was an expensive feature, didn't you?

A. I did.

Q. "The problem of heredity is an additional feature of this condition that will require the most careful study in the future"?

A. I did. And I said that they should be sterilized and placed in an institution for life.

Q. I am coming to that. "The preventive measure of choice is sterilization. Such a law has been passed in many states in regard to the defective, the epileptic and the insane, and I believe that it is only a question of time until it will be applied to certain classes of criminals, especially the psychopathic personalities." Did

1758 you say that?

Testimony of E. W. Cocke

A. I did.

Q. 'If they were placed on a farm, sterilized, and, as a reward for good behavior, allowed to marry and live a semi-normal sex life with female psychopaths who have also been sterilized, they would, at least, be given a chance to spend their remaining years under conditions that were a little more socially humane.'

A. I said that.

Q. That was your view then?

A. Yes, sir.

Q. You still think they should be sterilized?

A. I am still of that same opinion.

Q. I believe you said that they should be placed on a large agricultural farm with dairy facilities?

A. I stated that. Of course, as I said, it is an expensive measure to have to take care of about 30% or 40% of the people in the penitentiaries today and something has got to be worked out from an economical standpoint.

Q. Well, I say you think they ought to be placed on a large farm, where there are large herds of cattle—

A. (Interrupting) In an institution where they can make their own way and make their living.

1759 Q. Then you are opposed to confine them?

A. No, they should be confined on a large agriculture, farming place.

Q. You are against strict confinement?

A. I think they should be under absolute supervision and restrained in an institution where they will remain for life, and there taught a trade. Farming is very wholesome, outdoor exercise and so on. I just merely mentioned farming.

Q. You still ascribe to the theory, don't you, Doctor, that these types are hopelessly incurable?

A. I do.

Q. And I will ask you again that, if Tom Robinson Jr. has been cured, your diagnosis was incorrect?

A. If he was insane and has been cured, my diagnosis was incorrect.

Q. Oh no. If he was a psychopathic personality and has been cured, then your diagnosis is incorrect?

Testimony of E. W. Cocke

A. He hasn't been cured then.

Q. Well do you know that?

A. If we were correct in our diagnosis, he has not been cured.

Q. Then it logically follows that if he has been cured, your diagnosis was incorrect?

1760 Mr. Brown: Well I am going to object to that.

The Court: We have gone into that two or three times, haven't we?

Mr. Hogan: Well I don't think we have gone into that particular phase of it.

The Court: The witness said he never saw one recover, as I understand it.

Q. And, according to your belief, they never recover?

A. That's right.

Q. If there is a recovery, they would come under some other type than a constitutional psychopath?

A. Some fellow missed it.

Q. Then you missed it if that is true?

A. That's right.

Q. Because you haven't seen him and you don't know whether you missed it or not?

A. That's right.

Mr. Hogan: That is all, Doctor.

The Court: We will take the adjournment at this time, gentlemen. Members of the Jury we will adjourn for the noon recess; do not discuss this matter among yourselves, or with anyone or permit anyone to come in contact with you about this case in any way. Eat lightly for lunch to-day, if you please, and return at 2 o'clock.

1761 Met pursuant to the noon adjournment, and continued with the trial as follows:

RALPH R. BARKER was called as a witness in rebuttal and after having been first duly sworn was examined and testified as follows:

Direct Examination by Mr. Innan.

Q. What is your name?

A. Ralph R. Barker.

Testimony of Ralph R. Barker

Q. Where are you employed?

A. At Du Pont Company at Old Hickory, Tennessee.

Q. In what capacity?

A. Employment supervisor.

Q. As such Employment Supervisor do you have custody and control of the employment record of Thomas H. Robinson Jr. with the E. I. Du Pont and Nemours Company?

A. I do.

Q. Do you have that record with you?

A. I do.

Q. Will you produce it, please?

A. All right.

Q. Was that record made in the ordinary course of business?

A. Yes, sir.

1762 Q. Is that a part of the records of the E. I. Du Pont and Nemours Company?

A. Yes, sir.

Q. Was it part of the usual course of business of the Du Pont Nemours Company to make such a record?

A. It was.

Q. Was the record made at the time the transaction occurred which is reflected on there?

A. To the best of my knowledge it was.

Q. In the usual course of business?

A. Yes, sir.

Q. Do you know the defendant, Thomas Henry Robinson Jr. yourself?

A. I do not.

Q. Will you refer to that record and tell the jury whether or not Robinson Jr. was employed by the Du Pont Company at Old Hickory, Tennessee?

A. This record shows that Thomas Henry Robinson Jr. was employed by the Du Pont Company during two periods of time.

Q. What was the first period?

A. The first period was from 9-4-25 to 9-19-25.

Q. And the second period?

A. The second period was from 10-31-33 to 4-23-

Testimony of Ralph R. Barker

34.

1763 Q. I will ask you to file those records with your testimony as Government Exhibit No. 82, with permission to withdraw it and at the close of the trial substitute copies.

A. All right.

(The records above described were handed to the Reporter, marked Exhibit for the Government No. 82, and filed with the record.)

Cross-examination by Mr. Hogan.

Q. Mr. Barker, what is the year of that first employment?

A. 1925.

Q. Is there any record of his reemployment after 1934?

A. No, sir.

JOHN A. WARD was called by the government in rebuttal and after having been first duly sworn was examined and testified as follows:

Direct Examination by Mr. Inman.

Q. State your name to the jury?

A. John A. Ward.

1764 Q. Where do you live now?

A. Wilmington, Delaware.

Q. By whom are you employed?

A. E. I. Du Pont & Nemours Company.

Q. In 1934, where were you employed?

A. In Old Hickory, Tennessee.

Q. When did you go to Old Hickory, Tennessee?

A. I went to Old Hickory in September of 1933 the last time.

Q. And did you remain there through April 1934?

A. Yes.

Q. Were you employed by the same company?

A. I was.

Testimony of John A. Ward

Q. And in what capacity?

A. As Chief Clerk of the construction job that was going on there at that time.

Q. Do you know the defendant Thomas H. Robinson Jr.?

A. Yes.

Q. Was he employed by your company?

A. He was.

Q. I show you Government Exhibit No. 82 and ask you if you recognize those records?

A. I do.

1765 Q. Did you handle the employment of this defendant Robinson?

A. I didn't hear you.

Q. Did you employ him yourself?

A. Yes.

Q. In what capacity was he employed?

A. Outside timekeeper.

Q. How many men were on the job? That is, how many men whose time had to be kept?

A. Well that was a variable figure.

Q. From what figure to what figure?

A. Well at one time there were very few, and then there were as many as 1100.

Q. From October 1933 to April 1934 what would be the highest and lowest?

A. The highest would have been about 1100, I would say.

Q. Did you have a time clock?

A. No.

Q. The timekeeper was the person who kept the time. Is that right?

A. They checked the men in the field twice a day. They were supposed to go out and see every man twice a day.

Q. Did you from the period of October 1933 to
1766 April 1934 have occasion to see the defendant Robinson often?

A. Not every day, but I would say five or six times a week.

Q. From your observation of him, tell the jury what

Testimony of John A. Ward

his actions were—whether they were normal or abnormal?

A. He did us a very good job.

Q. From an educational standpoint, what was your observation of him?

A. I think he was quite a well educated man.

Q. From your observation of him did he appear to be a person who knew right from wrong?

Mr. Hogan: Now I object to that because he is not an expert and I cannot believe that anybody can say by looking whether a man can say he knows right from wrong.

The Court: Not from just looking but from contact from any act, any talks you might have had with him, from your whole contact with him. The witness will understand that he is not attempting to give an expert's opinion, but giving a layman's opinion. I think the witness can have the benefit of a laymen's opinion of what his acts and contacts were.

A. I would say he was a good employee. He did this job properly. We had no difficulty with him. He was one of many employees.

Q. Did he leave the company voluntarily?

1767. A. No, he was discharged.

Q. Will you refer to the records and tell the jury the reason for his leaving?

A. In my own handwriting here it says, "Was a very satisfactory timekeeper, but past record makes his retention impossible."

Cross-examination by Mr. Hogan.

Q. Mr. Ward, I believe you were called upon at one time to bring those time records, or Tom Robinson Jr.'s time records into court to establish that Robinsen was on duty at a particular time, were you not?

A. No, sir. These records to my knowledge have never been out of Old Hickory until right now.

Q. Were you in charge of those records?

A. Normally, yes. The Chief Timekeeper was in charge of them, but no one could take them out of the office without my permission.

Q. Well, were they taken out of the office to establish

Testimony of John A. Ward

his—

A. (Interrupting) I am certain that they have never been out of the office until now.

Q. Then why did you discharge him?

A. Because I was informed by one of the employees of the plant that he had been in trouble with the authorities. He was a bonded employee. He had a fidelity bond and I realized that if I told the bonding company that I found that he had a criminal record, we will call it, or had been in trouble, that they would cancel the bond and I would have to leave him go, because it was a bonded job that he was employed in.

Q. So you yourself told this man that his services were no longer necessary with that company?

A. Yes, sir.

Q. I mean you personally told him?

A. Yes, sir.

Q. How did he accept that?

A. Very nicely. We had no argument at all.

Q. Did it make any impression upon him at all? It didn't please him, did it?

A. Well you are asking me to tell you something that happened a long time ago.

Q. Well so is the government.

A. He was not happy about it. His father came out with him the following day to see me and he asked me if I couldn't change my mind and I showed him my position and told him I couldn't.

Q. Under your company's rules, you could not
1769 take him back?

A. Unless I contacted the bonding company and got their permission, and I was almost certain that they would turn him down.

Q. And you did not take him back?

A. No.

Q. I believe you know that he used your name, or that he used the name of John Ward some time later, did you not?

A. I have heard that was true. I have not lived in

Testimony of John A. Ward

this country much in the last ten years, or nine years, so he probably could have done a lot of things that I would not have heard of.

The Court: You mean in this part of the country or the United States?

Witness: Out of the United States.

The Court: You have been out of the United States?

Witness: Yes, sir.

Q. So, evidently your discharging him made some deep-rooted impression on this boy's mind?

Mr. Brown: How could this witness know what impression it would make on somebody's mind.

The Court: I think this witness can merely
1770 testify as to what Robinson said or did at the time or later when he saw him. What Robinson thought afterwards this witness certainly would not know.

Mr. Hogan: That's all.

Redirect Examination by Mr. Inman.

Q. I will ask you whether or not when he was discharged from this bonded position you offered him any other job that was not bonded?

A. Yes, to the best of my recollection I told him that he would be perfectly free to have a job as a helper, which was not a bonded job, if he wanted it.

Q. And did he accept that job?

A. No, he did not.

Recross-examination by Mr. Hogan.

Q. He felt that that was beneath his dignity?

A. I don't know what he thought.

Q. He didn't take it, did he?

A. No, he didn't take it.

Q. He wanted to be a man of authority, in charge—

The Court (Interrupting): Now just a minute.
1771 What he said this witness can tell. What he might have thought, I don't know that this witness would know unless it was expressed in some way.

Mr. Hogan: That's all.

Testimony of Merl E. Long

DR. MERL E. LONG was called as a witness in rebuttal by the government and, after having been first duly sworn was examined and testified as follows:

Direct Examination by Mr. Inman.

Q. State your name to the jury?

A. Dr. Merl E. Long.

Q. What is your profession, Doctor?

A. Dentistry.

Q. How long have you been practicing dentistry?

A. Since 1925.

Q. And in 1934 did you have an office in the Forsythe Building at Oak Park, Illinois?

A. Yes, sir.

Q. Is your office still in that building?

A. Yes, sir.

Q. Did you know the defendant, Thomas H. Robinsin Jr. in 1934?

1772 A. Yes, sir.

Q. Was he employed by that building at that time?

A. Yes, sir.

Q. In what capacity?

A. As a janitor.

Q. From July 12, 1934, up to August 16, 1934, did you have occasion to see him professionally?

A. Yes, sir.

Q. About how many times did he call at your office?

A. About eight or nine times.

Q. In addition to the visits to your office did you see him and talk to him?

A. In the parking lot back of the building.

Q. During that period of time did you have occasion to observe him and engage him in conversation?

A. Yes, sir.

Q. From your observation of him and your conversation with him, tell the jury whether or not in your opinion he was a man who knew right from wrong?

Mr. Hogan: Same objection?

Testimony of Merl E. Long

The Court: The same admonition to the jury. I think this witness can tell from his contacts with the defendant, and from his observation of him, and what he did, **1773** and how he talked, as to what his impressions as an ordinary man would be as to the conduct of this defendant.

A. In my opinion I think he was a normal man.

Q. You think he was a normal man, you said?

A. Yes.

Q. Do you think he knew right from wrong?

A. Yes, sir.

Q. From your conversation with him and from your observation of him, tell the jury whether or not in your opinion he was a man who realized the consequences of his acts?

Mr. Hogan: Same objection.

The Court: Same admonition to the jury, keeping in mind that the witness is not a medical witness; that he is a layman like the rest of us are, giving a layman's impression.

A. I think so.

Q. From an intelligence standpoint, what was your idea of his intelligence?

A. Well I think he is above the average intelligence.

Q. Did you discuss with him that matter?

A. No I don't think so.

Q. Was there any discussion between you and **1774** Robinson as to why a man of his intelligence would hold that kind of a job?

A. I asked him why he was keeping the job as janitor and he said to tide him over until he could get a better job.

Cross-examination by Mr. Hogan.

Q. You are not a medical doctor, are you?

A. No, sir.

Q. Are you a psychiatrist?

A. No, sir.

Q. Have you ever conducted any test on any individual to determine their mental ability?

Testimony of Merl E. Long

A. No, I would have no occasion to.

Q. You haven't, have you?

A. No, sir.

COMMANDER O. C. DEWEY was called as a witness and after having been first duly sworn was examined and testified in behalf of the government as follows:

1775 Direct Examination by Mr. Brown.

Q. State your name?

A. Lt. Commander O. C. Dewey.

Q. Of the United States Navy?

A. Yes, sir.

Q. Where are you stationed, Commander Dewey?

A. At the Naval Training Station, Great Lakes, Illinois.

Q. During the year 1936, what position with the government did you hold?

A. Special Agent in Charge of the Federal Bureau of Investigation at Louisville.

Q. Were you Special Agent in Charge and were you present at Louisville when the defendant, Thomas H. Robinson Jr. was returned from California to Louisville?

A. Yes, I was.

Mr. Hogan: Let me ask this witness one or two questions. Commander Dewey, have you been seated in the court room at any time during these proceedings?

Witness: No, sir, I have not.

Q. Did you see this defendant, Thomas H. Robinson Jr., on May 12th and 13th, 1936?

A. Yes, sir.

1776 Q. Did you have any conversation with this defendant in your offices in the Starks Building on those dates?

A. I did.

Q. Were you present in the court room on May 13, 1936, when the defendant Robinson was brought into the court room?

A. Yes, sir.

Testimony of Commander O. C. Dewey

Q. I will ask you if the defendant Robinson was shackled?

A. No, sir, he was not.

Q. Was the defendant handcuffed to anyone?

A. Yes, sir, he was handcuffed to one of my Agents.

Q. One arm or both arms?

A. One arm.

Q. Did you at any time during those two days threaten the defendant Robinson with death if he did not plead guilty to the indictment? Or did you intimate in any way or by any motion or any action whatsoever what plea he should enter to the indictment?

A. No, sir, I did not.

Q. I will hand you government Exhibit No. 34 and ask you if you exhibited that pipe covered in brown paper to the defendant Robinson?

1777 A. Yes, sir.

Q. I will ask you if you did not ask the defendant, Thomas H. Robinson Jr., if he had not hit Mrs. Stoll upon her head twice with this iron pipe and if the defendant did not answer—

Mr. Hogan (Interrupting): Now wait a minute. That was a statement made before arraignment.

The Court: The objection is well taken. A statement made by the defendant before he was arraigned—

Mr. Brown (Interrupting): Well we went into that. He went into it and you let him ask the defendant Robinson if that didn't happen.

The Court: Is that the point where Mr. Hogan waived this question?

Mr. Brown: Yes.

The Court: Well, let's get the transcript. There was one point where you were advised that if you opened it up that that would be rebuttal.

Mr. Brown: Here is the transcript, on page 1242 (handing the transcript to the Court).

(After conference between counsel and the Court:)

The Court: Let the record show that the objection was sustained.

Q. I will ask you if you on May 12, 1936, did not

Testimony of Commander O. C. Dewey

1778 exhibit this pipe to the defendant, Thomas H. Robinson Jr.?

A. I did.

Cross-examination by Mr. Hogan.

Q. Mr. Dewey, were you at that time a graduate attorney of any law school?

A. No, sir.

Q. Have you ever been?

A. I have attended law school; yes, sir.

Q. You were in charge of the FBI office here in Louisville at that time—that is, May 1936?

A. Yes, sir.

Q. And most FBI Agents are attorneys, are they not?

A. Attorneys or accountants.

Q. Were you an accountant?

A. No, sir.

Q. You did not have either of those qualifications then?

A. I was not a graduate attorney.

Q. You had had some legal training?

A. Yes, sir.

1779 Q. How much?

A. About 2½ years.

Q. In what school?

A. George Washington Law.

Q. What department is the Federal Bureau of Investigation a part of?

A. The Department of Justice.

Q. How long was Robinson held in that Starks Building?

A. He arrived about noon on the 12th and brought over here about 3 o'clock of the 13th.

Q. Was he permitted to see an attorney in the Starks Building?

A. He did not want to see any.

Q. Well did he see one?

A. No, sir, he did not.

Q. You knew his past insanity record when you had him over there, didn't you?

Testimony of Commander O. C. Dewey

A. I knew about it, yes sir.

Q. And you were in charge of the office?

A. Yes, sir.

Q. And you had been to law school over 2 years? Is that right?

A. Yes, sir.

1780 Q. And you knew that we had a constitution in the United States that protected the rights of individuals and citizens. Is that right?

A. Yes, sir.

Q. And you knew that he had been adjudicated insane?

A. Yes, sir.

Q. And yet you, in charge of that office, brought him into this court room and allowed him to accept a plea of guilty without counsel, didn't you?

A. I had nothing to do with that.

Q. Well were you in charge of the office, or weren't you?

A. I was in charge of the office.

The Court: I believe when a man makes a plea that that is the Court's duty. The FBI doesn't have charge of that.

Q. Well did you tell the Judge that this boy had been adjudicated insane?

A. The Judge never asked me.

Q. Well did you tell him?

A. Well I never conferred with Judge Hamilton.

Q. You came to the court room with him, didn't you?

1781 A. Yes, sir.

Q. You knew he didn't have an attorney, didn't you?

A. I wouldn't say that.

Q. The court records disagree with you on that, don't they?

A. I don't recall what the court records show.

Q. Have you ever read the case of Robinson vs. the United States?

A. Not in its entirety.

Testimony of Commander O. C. Dewey

Q. You know in that case that it was judicially determined that he did not have counsel, don't you?

A. That is what I have heard.

Q. Didn't you feel it a sense of duty to advise the court that this man had been adjudicated insane?

A. I think that is a matter for the United States Attorney and for the Judge. I was merely an investigating officer.

Q. Were you a part of the Justice Department of the United States?

A. Of the Federal Bureau of Investigation.

Q. And a part of the Justice Department, weren't you?

A. It is a branch of the Justice Department.

1782 Q. Was it justice to bring this man in without counsel?

Mr. Brown: That is pure argument.

The Court: I believe we are getting into an argument of the case. Let the witness state the facts and you can argue it to the jury later.

Redirect Examination by Mr. Brown

Q. I will ask you if an attorney from Mr. Huggins' office by the name of Gabbard didn't call you concerning the Robinson matter and didn't you call Robinson about it and he said he did not want to talk to him?

Mr. Hogan: Objection, because the court records prove to the contrary.

The Court: I think the Court's opinion points that out, doesn't it?

Mr. Hogan: The Court's opinion said he didn't have counsel, Your Honor.

The Court: Didn't they say that Mr. Gabbard came?

Mr. Hogan: But not in the guise of counsel.

The Court: He may not have been counsel of record, but I think the Court's opinion did point out that

1783 Mr. Gabbard did come to the court room. If you wish to get the Court's opinion we can do so, but I think the Court's opinion that that did not constitute counsel of record in that Mr. Gabbard did not enter his appearance of record.

Testimony of Commander O. C. Dewey

Q. And I will ask you further if Mr. Clem Huggins wasn't in the court room and if his name didn't appear of record?

A. Yes, sir.

Mr. Hogan: Now that is just not so.

The Court: No. His name did not appear of record for the defendant. His name appears, I believe, as having taken part in the discussion.

Mr. Hogan: There is a vast difference between appearing of record and appearing as a friend of the family.

Mr. Brown: Are you telling me or arguing it?

Mr. Hogan: I am telling you.

The Court: I will instruct the jury on that, if there is any question between these gentlemen, get the opinion that details the facts. I was not here, and I don't know whether Mr. Hogan was here or not. But I have read the opinion, and it recites the facts and if you gentlemen want those facts correctly presented to the jury, we can take them from the opinion. As I recall it, the opinion
1784 ion said that Mr. Huggins was present and had conferred, either with Judge Hamilton or the defendant. I don't know which, but that he stated to the court in open court when called upon that he was not appearing as counsel of record for the defendant.

Mr. Hogan: That's correct.

DR. DENNIS E. SINGLETON, was called by the government as a witness in rebuttal and, after having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Brown.

Q. What is your name, Doctor?

A. Dennis E. Singleton.

Q. Where do you live?

A. Mendota, Wisconsin.

Q. By what concern or branch of the government are you now employed?

A. With the government.

Testimony of Dr. Dennis E. Singleton

Q. In what capacity?

A. Psychiatrist.

Q. Connected with an institution?

A. Yes, sir.

1785 Q. What type of institution?

A. Mental hospital.

Q. During the year 1936 were you connected with any branch of the United States government?

A. Yes, sir.

Q. What branch?

A. The United States Public Health Service.

Q. How long have you been with the United States Public Health Service?

A. Well I have been with them twice. I had been with them since 1931 at that time.

Q. In what capacity were you with the U. S. Public Health Service?

A. I was psychiatrist at the Federal Penitentiary at Leavenworth, Kansas.

Q. Of what schools or colleges are you a graduate?

A. University of Missouri, and the College of Medicine of Louisville.

Q. When did you graduate from the University of Missouri and then at Louisville?

A. I left Missouri in 1902 and in Louisville 1905 I graduated in medicine.

Q. Since 1905 have you continuously practiced your profession?

1786 A. Yes, sir.

Q. Have you specialized?

A. I have been in psychiatry—neuropsychiatry with the exception of 4 years since I graduated.

Q. Since 1905 you have been in neuropsychiatric work?

A. Yes.

Q. I will hand you a document and ask you to examine that and tell the jury what it is?

A. This is a report made by the various members of the Classification Committee at the Leavenworth Penitentiary.

Q. Pertaining to what person, Dr. Singleton?

Testimony of Dr. Dennis E. Singleton

A. Thomas H. Robinson Jr.

Q. Suppose you tell us while we are waiting for that your customary practice while you were at Leavenworth in 1936 of affording any inmate psychiatric examination—just your general practice on that?

A. I interviewed all the inmates that came into the institution, and many of them I did more than the regular interview. Of course, I couldn't give all of them a special examination, but many of them I did. As well as I remember we had some 275 to 200 admissions a month, and of course that was pretty heavy service. I recognize
1787 this here as my examination.

Q. I will hand you that and I will follow along with this.

The Court: Has the doctor testified about his connection with Leavenworth?

Mr. Brown: I am going to ask him that now.

Q. Now, during the year 1936, Doctor, what position did you hold with the United States Penitentiary at Leavenworth, Kansas?

A. I was a psychiatrist in the Public Health Service. The Public Health Service had the mental activities of the federal penitentiaries.

Q. And you were in charge of all mental examinations conducted by the United States Public Health Service at the U. S. Federal Penitentiary at Leavenworth, Kansas?

A. Yes, sir.

Q. Now would you refer to that report and tell the jury whether any mental or physical examination was given to the defendant, Thomas H. Robinson Jr.?

A. This examination of mine was done on the 19th day of June, 1934.

Q. 1936, I believe it is.

A. That's right, 1936.

Q. Now, just tell the jury what you found as a
1789 result of the physical and mental examinations?

Mr. Hogan: Now, if Your Honor please, that is objected to on the ground that this examination, or the result of it or the chart contains some statements made by this defendant to this doctor for the purpose of enabling

Proceedings

him to make a finding and upon the same basis that these other statements were made before arraignment, they are inadmissible.

The Court: Well we won't repeat the statements which Robinson may have made to him. I don't want you, Doctor, to tell the substance of any statement he made to you, but from your observation of him, and in talking to him, I think you can give your opinion as to his mental condition. That is an issue in this case which you raised for the defense, and since that issue has been raised I think the government has the right to meet it. He is not going to give any statement of what the defendant says at all. The jury will not be permitted to hear those statements.

Mr. Hogan: If Your Honor please, I think my objection is still good because anything that—necessarily this doctor would have had to talk to him before he could have made up his mind that—as to his mental condition.

The Court: Well doesn't the rule only go to 1789 preventing the jury from having the statement the defendant made?

Mr. Hogan: Yes, sir.

The Court: All right. I have just told the doctor not to tell the jury any statement which the defendant made.

Mr. Hogan: But the point is that he could not formulate his opinion until he had talked to and got some statements from the defendant.

The Court: He could talk to him. He doesn't have to repeat what the defendant said. From his conversation with him he could determine something about the sanity of this defendant. Of course the defendant is not going to be able to claim that he was insane at that time and then prevent any witness who saw him at that time from testifying that he was sane. That would be a most unusual position for the defendant to contend for.

Mr. Hogan: Your Honor, our objection is not done for the purpose of precluding that. We are willing to have the testimony, of course, upon the sanity or insanity, but this statement, as I have said before, does contain some statements and, therefore, that was the first objection.

Testimony of Dr. Dennis E. Singleton

The Court: You understand, Doctor, don't repeat to the jury anything that this man said to you.

1790 Q. Omit from your testimony, Doctor, any statements that the defendant Robinson made to you. Of course you can have in your own mind any statements that he may have made to you?

The Court: Not as to the truth of those statements or untruth but as to bearing on his mental capacity, sanity or insanity.

Q. With reference to the medical report, Doctor, will you tell what your examination—

A. (Interrupting) There is a separate mental report here.

Q. No. First I want to get the physical examination before I get the mental.

A. All right. That is the one just before the mental report.

Q. Let's be sure that we are looking at the same report; 2 (b) medical report, physical examination. That's right.

A. Yes.

Q. Now omit any statements Tom Robinson made to you, tell the jury what you found out as a result of that physical examination?

A. He appears to be in good physical condition. He is well nourished and well developed.

1791 Q. Did you notice any physical defects, Doctor?

A. No. There are none recorded. His vision is 20/20 in the right eye, and 20/50 in the left eye. His tonsils had been removed. You just want the positive findings.

Q. Yes?

A. The only thing I see abnormal here is defective vision in the left eye.

Q. Now with reference to the neuropsychiatric report, will you refer to that and tell the jury what you found abnormal?

A. There is nothing abnormal neurologically.

Q. What do you mean by that?

A. Neurological examination—that is the pupillary re-

Testimony of Dr. Dennis E. Singleton

action, etc. It is connected perhaps more with the physical than the mental examination.

Q. All right now doctor and tell the jury about that?

A. He has the mental age 18.3 and he has an I. Q. of 114.

Q. Now tell the jury what that means?

A. This is a revision of the Simonbinet test that we were giving to all inmates at that time.

Q. Now what did he get from that test?

1792 A. An I. Q. of 114. 100 is supposed to be the average adult intelligence. This is above.

Q. Would you call it a good performance, fair performance or an excellent performance?

A. I would call it an excellent performance. This report shows here that he does a better than normal test throughout the performance.

Q. What type of manual performance did he show?

A. He showed a high degree of attentiveness and alertness during the entire procedure. He shows a rather good manual performance and is capable of rather intricate industrial work.

Q. Now with reference to the next paragraph, would you tell the jury with reference to your neuropsychiatric report?

A. Yes. You see when these men come in we have a history of them. There is an extensive neuropsychiatric report which accompanies this case, and it appears to be little, if anything, of importance to be added. Now that is a report that goes along with him there and I didn't see any use of copying that.

Q. Just go ahead and state what this shows?

A. "His stay here has been uneventful. He has been observed daily by the medical staff, and nothing unusual has been noticed. He is fairly cheerful, responsive, and in excellent touch with his surroundings, and has made a good adjustment in segregation."

1793 Q. Will you read the rest?

A. "He is pleasant. During this interview he responded relevantly and coherently. He is very respectful, polite and agreeable. Emotionally it could not be said that

Testimony of Dr. Dennis E. Singleton

he is depressed, but he is by no means facetious or euphoric."

Q. What do you mean by "euphoric"?

A. Over talkative. Happy. "He understands perfectly well his situation and consequently would not be cheerful. There is nothing whatsoever to indicate that he—"

Mr. Hogan (Interrupting): Now back up there just a minute, Doctor. Shouldn't that be "should not be cheerful"?

Witness: " * * * And consequently should not be cheerful." That's right. It was in keeping with his situation.

A. (Continuing) "There is nothing whatsoever to indicate that there is any mental illness present at this time. Some five years ago—" Do you want me to read that part of it?

Q. It is all right with me if it is all right
1794 with Mr. Hogan.

Mr. Hogan: Read down to the next period.

Witness: Stop at the next period?

Mr. Hogan: Maybe you had better stop there because it follows up with a statement beginning with, "he said."

Q. All right. Now suppose you start down where it says, "This young man gives the impression * * *."

A. "This young man gives the impression of an apparent constitutional lack of responsiveness to social demands, truthfulness, decency, consideration of others, regard for sexual mores, and generally he is thoroughly asocially conditioned."

Q. Now what do you mean by "asocially"?

A. A disregard for people and untrustworthy. I would say perhaps would be the best thing.

Q. All right, go ahead.

A. "He is unable to profit by his experience in which he has been relatively privileged and punished. He lacks continuity of purpose on a domestic, occupational, and social level. All of which definitely shows that he is a constitutional psychopathic, inferior, with criminal instincts, irresponsible, hyper-sexual activities, and emotional

Testimony of Dr. Dennis E. Singleton

instability."

1795 Q. Go ahead with the next paragraph?

A. "He is egotistical, over-estimates his ability to a very great extent. He has an exaggerated disrespect for the property rights of others. His attitude to his present environment is apparently good. His attitude toward society and the law is obviously one of disregard and lack of interest."

Q. Doctor, as a result of your medical examination, and your training, I will ask you if, in your opinion, this defendant knew right from wrong?

A. Yes, sir.

Q. I will ask you if, in your opinion, he was capable of distinguishing between right and wrong and realized fully the consequences of any deliberate act?

A. Yes, sir.

The Court: That is, at that time?

Mr. Brown: Yes.

The Court: That was in June 1936?

Witness: Yes, sir.

Cross-examination by Mr. Hogan.

Q. What is psychosis?

A. Insanity. That is the medical term.

1796 Q. It means disease of the mind?

A. That is right.

Q. What is psychopathic personality?

A. Psychopathic personality does not imply psychosis. It is an abnormal behavior manifesting in the volitional and emotional field, I should say, with many different types, many abnormal types of behavior.

Q. That latter term is an unsatisfactory and unscientific diagnosis, is it not?

A. I wouldn't say—we all have a very definite idea when we talk about psychopathic personality, and a psychiatrist does. I do not think it is unscientific. I think we know very definitely what we mean by it.

Q. There is really no agreement on the classification of these types of personality?

A. Yes there are many different types of the manifes-

Testimony of Dr. Dennis E. Singleton

tation of a psychopathic personality.

Q. Kleptomania comes in that classification.

A. Yes.

Q. And Pyromania?

A. Yes.

Q. Alcoholic comes within that classification, too, I believe?

A. Some of them do. With part of them it is a
1797 psychopathic personality.

Q. These psychopathic personalities are usually hereditary, are they not?

A. I wouldn't say that.

Q. You don't think so?

A. I would not say it is altogether.

Q. Sometimes?

A. It might be a factor in their psychopathic personality. We know many of them that we can't find any hereditary taint with them.

Q. Does a psychopathic personality ever change?

A. Not a great deal.

Q. They either stay in the same trend or they get worse?

A. We have exacerbations at times.

Mr. Brown: What does that mean?

Witness: Well they will be fairly normal at times, at one time, and at another time they will be quite abnormal. They vacillate—they change from time to time. Their habitual pattern, however, is more or less continuous.

Q. They are a type that are never cured?

A. I never knew one to be cured.

Q. If it should be established that Tom Robin-
1798 son Jr. was cured, then would you say that your diagnosis was incorrect?

A. Yes.

Mr. Brown: Objection for this reason, because the doctors he has put on have testified that he was cured if he ever had a dementia praecox. Now this doctor says that he is not a dementia praecox and in fact he is not insane. He is sane.

Mr. Hogan: Yes but he said he was a psychopathic

Testimony of Dr. Dennis E. Singleton

personality, too; and I asked him if psychopathic personalities were ever cured, and he said no.

The Court: All right go ahead.

Q. Now then, Doctor, was your answer to my other question still yes?

A. What was the question?

(The question was read to the witness as follows:)

"Q. If it should be established that Tom Robinson Jr. was cured, then would you say that your diagnosis was incorrect?"

A. Cured of what?

Q. Cured of psychopathic personality?

A. He won't be cured.

Q. He won't be?

A. Not of a psychopathic personality.

1799 Q. Well, assuming that he is, would your diagnosis be wrong?

A. I will not accept such an assumption.

Q. You are an expert, aren't you?

A. I leave that to my colleagues.

The Court: He has told you what his experience is. The jury may judge his qualifications from his experience.

Q. Well did you ever make a wrong diagnosis?

A. Oh yes, yes, yes. Very definitely so.

Q. Well if Tom Robinson Jr. is not a psychopathic personality, now would you say your diagnosis in 1936 was incorrect?

A. Yes.

Q. Now after you made that examination, Tom didn't stay in Leavenworth very long, did he?

A. No, not very long.

Q. Where did he go?

A. Alcatraz.

Q. Where is that?

A. On the Pacific Coast.

Q. What is it?

A. A prison.

Q. A federal prison?

Testimony of Dr. Dennis E. Singleton

1800 A. Federal, yes.

Q. It is known as "the rock," isn't it?

A. Yes.

Q. Way out there in the San Francisco Bay?

A. I have never seen it, but I understand it is, 20 miles out.

Q. It isn't a very pleasant place, is it?

A. I have never been there, I wouldn't know.

Redirect Examination by Mr. Brown.

Q. Doctor, how much experience have you had in prison institutions?

A. Eight years.

Q. From your experience of dealing with inmates, what percentage of the prison population is made up of psychopathic personalities?

A. That would be a pretty hard thing to say. A good percent, however.

Q. Would you hazard, in your best judgment, what percent?

A. Well I would hazard a guess of definitely maybe 20% or 25%—20%.

1801 Q. Now is there a government institution where those persons who have been convicted of crime and then become mentally ill are sent?

A. Yes, sir.

Q. Where is that?

A. Springfield, Missouri.

Q. Now if there had been the slightest doubt in your mind that the defendant Robinson was not entirely sane, where would you have sent him?

A. I would have called for a Board on him, and we would have had a board and that would be recommended that he go to Springfield, Missouri.

Q. Now have you had occasion, in the years that you have been in prison work, to send many or few to Springfield?

A. I think, as well as I remember, in my eight years there that we have sent pretty close to 200 to Springfield from that one institution.

Testimony of Dr. Dennis E. Singleton

Q. That in your opinion had become mentally ill since their sentence?

A. Yes, sir.

Recross-examination by Mr. Hogan.

Q. Of course, if your diagnosis had been wrong,
1802 or if you believed it was, you would have sent him to Springfield?

A. If I had thought he was a mental case or had a psychosis I would have recommended him to go to Springfield, and I have never had one who was not sent after we recommended it.

Q. Of course you still say you made an improper—

The Court (Interrupting): You don't need to repeat that, I don't think.

Mr. Hogan: All right doctor, that's all.

The Court: Members of the jury, we will take a short recess. Do not talk about this case among yourselves, or with anyone, or allow anyone to talk about it in your presence. We will recess for five minutes.

After recess the following proceedings were had:

Mr. Brown: I want to introduce into evidence that copy of Dr. Singleton's report.

Mr. Hogan: Of course, I am going to object to that because if it goes into evidence the harm will be done.

Mr. Brown: Of course, I am not going to refer to it any further. I just want it for the purposes of the record.

The Court: I think you have got into the record what the doctor said, haven't you?

Mr. Brown: Yes, I suppose.

The Court: All right. Objection sustained.

1803 DR. R. M. RICHEY called as a witness in behalf of the Government, in rebuttal, being duly sworn, was examined by Mr. Brown and testified as follows:

Direct Examination by Mr. Brown.

Q. State your name to the jury.

A. Dr. Richey—Dr. R. M. Richey.

Testimony of Dr. R. M. Richey

Q. Now, Dr. Richey, I wish you would talk a little louder so that all the members of the jury can hear you. Your name is Dr. R. M. Richey?

A. That's right.

Q. Where do you live, Doctor?

A. I live at Alcatraz, California.

Q. What position do you hold, Doctor, at Alcatraz?

A. I am the chief medical officer at the penitentiary there.

Q. How long have you been chief medical officer?

A. Since May of 1938.

Q. Of what schools or colleges are you a graduate, Doctor?

A. I graduated from Rush Medical College in Chicago, in 1904.

Q. Since 1904, have you practiced continually your profession?

1804 A. With the exception of about a year or so immediately after leaving school, I have been occupied with psychiatry.

Q. Have you specialized?

A. Yes, sir.

Q. In what type of work?

A. Nervous and mental diseases.

Q. Are you attached to the United States Public Health Service or are you attached to the Bureau of Prisons?

A. United States Public Health Service.

Q. How long have you been with the United States Public Health Service?

A. Since 1931.

Q. Where have you been stationed since 1931?

A. I was stationed at McNeill Island Penitentiary from 1931 to 1938.

Q. From 1938 to date you have been at Alcatraz?

A. That's correct.

Q. As chief medical officer, do you have custody of all medical records at Alcatraz pertaining to any of the inmates?

A. I do.

Q. I'll hand you this record and ask you to examine

Testimony of Dr. R. M. Richey

and tell the jury whether those records are the records of the United States Bureau of Prisons, Department
 1805 of Justice, covering the defendant, Thomas H. Robinson, Jr.?

A. Yes, sir.

Q. When a man reaches Alcatraz and he has been at other federal institutions and is transferred to Alcatraz, I will ask you if all prior medical records do not accompany him to that institution.

A. They do.

Q. Have you in your possession the reports of examination, both mental and physical, covering the defendant, Thomas H. Robinson, Jr., in Atlanta, Leavenworth and Alcatraz?

A. I have.

Q. Now Doctor, without detailing any conversation that you had from the defendant Robinson, would you refer to your physical and mental examination and tell the jury from your records what that is?

The Court: You mean one that the witness made himself?

Mr. Brown: Yes, the one you made, Dr. Richey.

The Court: When did you make it, Doctor?

The Witness: In July of 1939 this summary was made. I think you have copies of that.

Mr. Brown: Yes, sir.

A. You want me to read the physical examination?

Q. Now just your own examination, mental and
 1806 physical, and pointing out any mental defects or physical defects, but don't tell to the jury any information you obtained from this defendant himself.

A. Well, he was a well nourished white man of thirty-two at that time, looks robust, claims good health, history of pneumonia as a child, tonsils had been removed, many teeth were missing, heart action was normal, lungs were clear; neurological was negative; Wasserman was negative.

Q. When you say Wasserman negative, what do you mean?

A. That is blood examination for syphilis.

Testimony of Dr. R. M. Richey

Q. Shows the absence of syphilis?

A. That's right.

Q. All right, go ahead.

A. The mental examination showed he was clear and well oriented, had a good memory, no disturbance of consciousness, gives a history of a mental disorder in 1929, but no psychotic symptoms are present now, and I refer to his own statements here.

Q. We want to omit his statements. Just tell from your examination of him.

A. There are no paranoid tendencies noted, the reasoning ability and judgment are not affected, his affect is perhaps a little flat although he is friendly and
1807 courteous and shows no great change in mood. The other statements refer to things which he said.

Q. We want to omit that from reading to the jury. Tell the jury your diagnosis of his condition, if you did make a diagnosis?

A. I made the diagnosis of a constitutional psychopathic inferiority, mostly inadequate. His I. Q. was 118.

Q. Now when you say constitutional psychopath, what do you mean by that, Doctor?

A. Well, I mean he belongs to one of the particular type of personalities that exhibits certain tendencies toward unusual conduct reactions which show an inability to adjust himself to social requirements, usually, not always, and also show emotional reactions which are sometimes inadequate or overly strong.

Q. Was the defendant as of the date of your examination, which I think you said was in 1939, was it?

A. Yes, sir.

Q. Did the defendant in your opinion know right from wrong?

A. Yes.

Q. Was he a person who was capable of distinguishing between right and wrong and realize the consequences of his own deliberate acts?

1808 A. Yes.

Q. Did he have any psychosis of any kind?

Testimony of Dr. R. M. Richey

A. No.

Mr. Brown: You may ask the witness.

Cross-examination by Mr. Hogan.

Q. Dr. Richey, what do you mean by the term psychosis?

A. Insanity, perhaps—it is a general term—will cover it.

Q. It means a mental disease, doesn't it?

A. It means a mental disease.

Q. You have already explained your definition of psychopathic personality.

A. Yes.

Q. Do you have psychosis with a psychopathic personality?

A. There is undoubtedly cases who are psychopathic personalities who do develop psychosis on top of it, that is true.

Q. Psychopathic means what, Doctor?

A. It doesn't mean anything very definite or that can be stated in very clear terms. It is a kind of—it is a
1809 type of person, that's about as far as I could go without fear of contradiction.

Q. In other words, it is a waste-basket type of diagnosis.

A. Well, no, I wouldn't call it that exactly. It represents something rather definite, but difficult to explain in certain terms.

Q. When you are unable to determine upon a particular type, you usually class them as psychopathic personality.

A. No, I wouldn't say that. You first determine whether there is a psychosis present, and if there is and we can't distinguish it or name it, we leave the diagnosis as undetermined. It is a psychosis undetermined.

Q. A pyromaniac would be a psychopathic personality.

A. It could be, I guess, but I wouldn't say that he is. He might be something worse.

Q. What is a pyromaniac?

Testimony of Dr. R. M. Richey

A. A man that likes to set fires, I think.

Q. That's true, but I mean what classification does he come under?

A. I wouldn't be able to say unless I could examine him and see why he liked to set fires, a good many angles to it.

Q. Would a fire bug be a dementia praecox?

1810 A. He might be a dementia praecox. He might be an obsessive neurosis.

Q. A little bit louder, Doctor?

A. He might be a case of obsessive neurosis, has compulsive ideas and things of that kind.

Q. Obsessive ideas?

A. Yes, sir.

Q. You mean by that, he would be obsessed with some particular idea?

A. In that case he would be obsessed with the idea that he had to set fires, or that he should set fires. There might be many motives for setting fires besides that, of course. I wouldn't say offhand what any particular pyromaniac was without examining him.

Q. Suppose one of these other types of psychopathic personalities would get obsessed with some different idea, would they be classified in the dementia praecox type?

A. I think not.

Q. You think the fire bug would, but—

A. Might.

Q. But the others obsessed with some other ideas would not, but he might.

A. He might.

Q. But if he were, would he be a dementia praecox?

A. I don't think I could give you a true answer
1811 to that question without having more factors brought into the picture, and I don't think I would wish to state.

Mr. Brown: The jury is having a good deal of difficulty hearing you, Doctor. You will have to hold your voice up.

Q. Let's take this example, that we have one of these religious men or men with religious ideas, that he is obsessed with the idea that he has to go out and take up

Testimony of Dr. R. M. Richey

where some of the Biblical characters left off. Would that type of man be a dementia praecox?

A. I don't think you could say whether he was or not without having other features brought out. Religious ideas are pretty prevalent and the extent to which they may go before they are looked upon as abnormal is a ticklish question, and we allow people pretty wide latitude in expressing their religious beliefs without question.

Q. Well, let's take this example and see where we can go with it. Suppose one of these religious fanatics, we will call them, or a man obsessed with religious ideas, was obsessed with the idea that he was the reincarnation of Moses, a Biblical character. Would that type of person be in your opinion a dementia praecox?

A. Not with that single identification, I don't think I would make a diagnosis.

Q. Let's assume further, that he believed him-
 1812 self or was obsessed with the idea that he was Moses, and that he did some of the things that we have read about in the Bible that Moses is supposed to have done. Would you say that he was a dementia case?

A. If his belief was so strong that it took him out of reality, so that he lost touch with his actual environment, I would certainly say that he had some sort of a mental disorder, yes. I don't know that I would still be willing to say that it was dementia praecox.

Q. You would say that he had some mental disorder, though.

A. Yes.

Q. If that idea of Moses were entrenched in his mind and he carried it into action, and although he had in his subjective mind—rather, that he did have in his subjective idea the idea to go upon the mountain and write upon the tablets, and that he couldn't control that idea and went upon some mountain or simulated mountainous topography, and believed himself to be carrying into effect Moses' ideas—would you then say that that type of person was a dementia praecox?

A. No, I don't believe that religious fanatics are all dementia praecox.

Testimony of Dr. R. M. Richey

Q. What types are dementia praecox?

A. Religious ideas, of course, become mixed up
 1813 in a good many psychoses, depending upon the background and culture of the individual, but to say that extreme religious beliefs are evidence of psychosis I do not think it is justifiable. Many people have strong religious beliefs who conduct themselves entirely within social restrictions and do not interfere in any way with their neighbors or their fellowman and they are allowed to hold their religious beliefs and practice them without interference or question.

Q. Well, Doctor, let's take this type of situation and assume that a person is obsessed with ideas, whether they be religious or otherwise, and does not have the control over his will to assist carrying into action those desires, wouldn't that be a typical case of dementia praecox?

A. Well, you say that he does not have the will to do anything else; I don't believe that's the case. He has a very strong will to actually do the things that he is doing. The reason he can't resist them is because he doesn't want to resist and he will perhaps be able to justify them to you and explain in great detail why he doesn't, and if they are consistent I still would say he is entitled to do them.

Q. Let's assume that there is such a situation where a person is imbued with the idea that he has gotten out of his subjective mind, and imbued with it to the extent
 1814 that he just carries it into effect without any control over willpower. Now we are assuming that his will power is destroyed, now. Would you say that that type is a dementia praecox?

A. Very likely he would be, or at least some deteriorating psychosis.

Q. He would either be a dementia praecox or a deteriorated mentally diseased person.

A. Yes.

Q. What about these psychopathic personalities, is that a hereditary condition?

A. I think there are perhaps more environmental factors in the production of that personality than there are hereditary, although both are doubtless concerned, and

Testimony of Dr. R. M. Richey

there is no hard and fast rule on that, there is no universal agreement even among psychiatrists as to the exact cause of a psychopathic personality, but the tendency is to feel that a large portion of it, at least, is environmental and it develops after birth.

Q. Usually in young children, I believe, when it first manifests itself?

A. Yes.

Q. I believe you are in agreement that psychopathic personalities are never cured.

A. They can be improved.

1815 Q. Are they ever cured?

A. Probably not.

Q. That is your expert opinion on that, is it not?

A. Yes.

Q. Then Doctor, if it is established that a person is cured when he once was diagnosed as a psychopathic personality, the fact that he is cured would disprove the original diagnosis, would it not?

A. Yes, to a large extent, at least.

Q. Doctor, how many inmates do you have in Alcatraz usually, on an average?

A. In the neighborhood of three hundred.

Q. Is that a fairly large building out there?

A. Oh, it is a fairly large building, yes.

Q. It is a federal prison, of course.

A. Yes.

Q. Sits up high on a rock?

A. It does.

Q. Any of them ever get away from there?

A. I don't think so.

Q. Some of them have tried it and failed, haven't they?

A. A good many of them have tried it.

Q. What surrounds the rock, as it is sometimes known?

1816 A. It sets in a bay, San Francisco Bay, about a mile and a half from the shore.

Q. Shark infested waters, is it not?

A. No, I don't think there are any sharks in there.

Testimony of Dr. R. M. Richey

Q. Any man-eating whales, or do you know?

A. I have never seen one.

Q. How do you get from the mainland onto this island?

A. The Government runs its own launch back and forth.

Q. Isn't there a boat that carries freight cars and passenger cars over there?

A. No. That train ferry doesn't stop at our place.

Q. Passes you up.

A. Yes.

Q. Is the discipline rather strict there?

A. Well, the custody is pretty close, yes. It is a maximum custody institution and every effort is made to supervise and control every hour of the day for every inmate, that's true.

Q. What is maximum custody?

A. That's the greatest degree of custody possible.

Q. Straight-laced custody?

A. Oh, no. No, no.

The Court: Does this have any bearing on the 1817 issue we have in this case?

Mr. Brown: I wouldn't think it has.

Mr. Hogan: I think so, Judge.

The Court: What issue does it bear upon?

Mr. Hogan: It bears upon the man's mental condition.

The Court: Back in 1934?

Mr. Hogan: No, in 1939, we will say.

The Court: We are interested in what his mental condition was in 1934.

Mr. Hogan: Judge, I must remind you that if we are, this witness is incompetent because he didn't see him until 1939.

The Court: How about the witnesses you had this morning who didn't see him until 1943?

Mr. Hogan: They were giving an opinion.

The Court: You mean it bears on his condition when this witness examined him, is that what you are trying to bring out?

Mr. Hogan: No, Judge, I am trying to find out the type of discipline there as it affects this—

Testimony of Elmer G. Allen

The Court: You mean, affecting it after he got there?

Mr. Hogan: Yes.

1818 The Court: I think it might have a bearing on his condition at the time when this witness examined him after he got there. If you are bringing it out for that purpose—

Mr. Hogan: I might state, I do not desire to pursue it at great length. I just want to establish it fairly reasonably. If Your Honor says to discontinue, I will do so.

The Court: You brought out most of the facts. I don't know that it is necessary to go into details, is it, of what Alcatraz is. It is a federal institution with maximum supervision, he says.

Mr. Hogan: I am willing to rest with this witness right now. He made a very good witness.

ELMER G. ALLEN called as a witness in behalf of the Government, in rebuttal, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Brown.

Q. State your name to the jury, please, sir.

A. Elmer G. Allen.

Q. Where do you live, Mr. Allen?

A. 2745 Alford Avenue.

Q. Here in the City of Louisville?

A. Louisville, Kentucky.

1819 Q. Where are you employed?

A. Reynolds Metals.

Q. During the year 1931, particularly May, June and July, 1931, where did you live?

A. I was at Beechwood Inn.

Q. Where is that located?

A. It is about three miles south of West Point on the Dixie Highway.

Q. Would you tell the jury at the time you were there in May, June and July, what was on those premises?

A. There was one big building, all under one roof, a

Testimony of Elmer G. Allen

dance hall, and a small restaurant in front and a bar, and a small kitchen on one side, and on the other side a very small check room. Then at the back, at the North end, in the rear, was a garage two story and there were three rooms upstairs, one about 12 x 14 and two very small rooms.

Q. During the time, during May, June and July, that you were at the Beechwood Inn, were there any tourist camps or cabins of any description on those premises?

A. No, sir.

Q. What people lived there at the Beechwood Inn?

A. My family, my wife and myself, my daughter and her husband, occupied the front room, and my single boy, and about four weeks of that time my other married
1820 daughter slept in one of these little rooms upstairs.

Q. Did one of your children have a child while you were there?

A. Yes, sir. My youngest daughter gave birth to a child, a boy, on the 11th of July, upstairs in this front room.

Q. Now, at any time that you were there during May, June and July, 1931, did you at any time rent any space in any of those buildings, or did anyone outside of the members of your immediate family, occupy any space on or in those buildings?

A. No, sir; absolutely not.

Q. Now, how long did you remain there, Mr. Allen?

A. I left there the first part of August.

Q. Were the premises purchased by anyone?

A. Yes, sir. Mr. Palmer bought the property from Carlisle.

Q. And you left there, to the best of your recollection, at what time?

A. I left there, if I am not mistaken, on a Saturday night after I had a dance in the night. I loaded up what stuff I had, I didn't have but very little stuff because my furniture was all here in Louisville, and I came back here to Louisville.

Q. Was that the last Saturday in July or the
1821 first Saturday in August?

A. I won't say, but I believe it was the first Sat-

Testimony of Edward S. Palmer

urday in August, I am not positive about that.

Q. When were you first interviewed about this by any member of my office or the FBI?

A. Night before last.

Mr. Brown: You may ask the witness.

Mr. Hogan: No questions, Mr. Allen.

EDWARD S. PALMER called as a witness in behalf of the Government, in rebuttal, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Brown.

Q. State your name to the jury.

A. Edward S. Palmer.

Q. Where do you live, Mr. Palmer?

A. Atlanta, Georgia.

Q. During the year 1931, where did you live?

A. Springfield, Tennessee.

Q. Had you ever lived in Louisville, Kentucky?

A. Yes. When I was quite a few years back.

Q. In 1931, did any members of your family live in Louisville, Kentucky?

1822 A. Yes, my mother and father.

Q. Did you have occasion on many or few occasions to come from Tennessee to Louisville, Kentucky?

A. Practically every week.

Q. How did you usually come from Tennessee to Louisville, Kentucky?

A. By car, in every case.

Q. Over what roads did you travel?

A. Dixie Highway.

Q. What business were you in, in Tennessee?

A. Tourist court business.

Q. What was the name of the camp that you owned in Tennessee?

A. Camp Squirrel Lodge.

Q. Where was that located?

A. That's located on 41, ten miles South of Nashville.

Testimony of Edward S. Palmer

Q. Now, directing your attention to the year 1931, I will ask if in the middle of the year 1931, you bought the Beechwood Inn.

A. Yes, sir; I did.

Q. I'll show you an original contract and ask you to examine the contract and tell the jury whether that is the contract that you executed to purchase the Beechwood Inn.

1823 A. Yes, this is the contract. I handled it myself.

Q. What is the date of that contract?

A. 13th day of July, 1931.

Q. Now, prior to the 13th day of July, had you seen or visited the Beechwood Inn?

A. Yes, sir. I had been watching that piece of property for several months prior to the time of purchasing it.

Q. During what time of year did you first become acquainted with that piece of property, then known as the Beechwood Inn?

A. The first time that I stopped and looked at the property was in early spring.

Q. When you say early spring, do you mean March or April?

A. March or April.

Q. Of 1931?

A. That's correct, and the ground was perfect for the purpose for which I wanted it, but I could not tell about the trees at that time, how many of them were living and how many of them were dead, so I didn't make any move until the trees did all leave out.

Q. When did you first go on and examine the structures that were on that piece of property?

A. Just prior to the 13th of July, possibly the 1824 day before.

Q. Now I will ask you to tell the jury when you examined that, what structures were on the Beechwood Inn premises?

A. The only structures that were on that property was the building, the front of it they were using for a restaurant, the back of it they were using for a dance hall, and the garage that was on the North side of the

Testimony of Edward S. Palmer

building.

Q. I will ask you to tell the jury if at the time you examined those premises, there were any tourist camps of any description or any cabins, tourist cabins, of any kind, character or description on those premises.

A. Absolutely none.

Q. After you had purchased that property, when did you move in?

A. I purchased it on the 13th day of July and we went to the bank to have the agreement notarized, and Mr. Ballinger who was a notary was out of the city. I returned to Springfield and made another trip back to West Point on July 21st.

Q. 1931?

A. 1931, at which time the agreement was executed and notarized, and I again returned to Springfield, coming back to West Point—Oh, within a week or ten days
1825 after the first of August.

Q. Now, sometime after you had purchased that property, did you make any arrangements to build any tourist cabins or places to rent to tourists on that property?

A. I did.

Q. When did you first start, or when did you first purchase any materials to be used in the building of tourist cabins or a tourist camp?

A. Along the last part of August.

Q. 1931?

A. 1931.

Q. Where did you purchase the material from?

A. The cement from the Kosmosdale Cement Company, the brick from the West Point Brick Company.

Q. How soon thereafter was the erection of these cabins started?

A. We started erecting them immediately after we started buying the material?

Q. Which was August of 1931?

A. Yes, sir, the last part of August.

Q. I'll show this ledger, and ask you to examine that and tell the jury whether that ledger was kept in the usual

Testimony of Edward S. Palmer

course of business.

A. That's correct.

1823 Q. Was it in the usual course of such business to keep such a ledger?

A. Absolutely.

Q. The entries therein, were they made contemporaneously with the transaction that was had?

A. Yes, sir, that is correct.

Q. Would you examine that ledger and tell the jury when the first tourist camp or cabin—when the first tourist cabin was occupied on those premises?

A. On October 12th there was one room rented.

Q. What year?

A. 1931.

Q. At any time, did you change the name of those premises from the Beechwood Inn to anything else?

A. Yes, sir. We changed it to Beech Grove.

Q. Beech Grove Tourist Camp?

A. That's right.

Q. I'll show you a picture which appears—the sign, "Beech Grove Camp, Cafe, Falls City Extra Pale Lager," and ask you to examine that and tell the jury when you changed the name of your place from the Beechwood Inn to the Beech Grove Tourist Camp.

A. We changed that name just prior to the time that we opened.

Q. That was in what month, what year?

1827 A. That was in August, 1931.

Q. Now I'll show you these pictures and ask you to examine that picture, and tell the jury whether that truly and accurately reflects the condition of the building that you testified was on those premises when you purchased it, July 13th, 1931.

A. The only change in this building was made by us, and the single door that was in the side of this building was changed to French doors; otherwise, that building was just as it stood.

Q. Now, with the exception of that building and the adjacent garage, to your own knowledge, can you tell this jury whether there was any other place on those grounds

Testimony of Edward S. Palmer

that could be occupied as living quarters?

A. No, sir.

Q. Who stayed there in those premises?

A. You mean prior to my purchase?

Q. No, Mr. Allen has already testified to that. At the time you purchased and moved there, who was there?

A. Mrs. Palmer, my four children and myself stayed there from the time we took it over until up in September when we returned to Springfield.

Q. At any time did you rent any space of any kind, character or description to anyone prior to the erection and occupancy of one or more cabins in October, 1931?

1828 A. In one case, late one afternoon, there was an old Model T Ford pulled in with Montana tags on it. There was a man in there possibly seventy years old with a girl, who he said was his daughter, that asked permission to pitch a tent for the night. They are the only people outside of my own family that stayed on the ground over night during the construction.

Q. And the first cabin by your records was occupied for the first time on what date, did you say?

A. October 12th, 1931.

Q. I'll show you two additional pictures and ask you to tell the jury what those pictures are.

A. One of the pictures is a view of the front dining room after we furnished it, and the other one is a portion of a banquet room which was constructed in 1932.

Q. In your trips from Tennessee to Louisville as the operator and proprietor of a tourist camp or cabin, will you tell the jury if there was any other spot from Kentucky to Tennessee on the Dixie Highway that was known as the Beech Grove Tourist Camp?

A. No, sir, I don't know of another one.

Q. On the Dixie Highway between here and Elizabethtown, are you able to tell the jury of your own knowledge whether in the year 1931, other than your place, was there any camp known as the Beech Grove Tourist Camp?

1829 A. Not that I know of.

Q. How many times have you been over that road in 1931, Mr. Palmer?

Testimony of Edward S. Palmer

A. The average of every week.

Q. Mr. Palmer, when were you first interviewed in this matter?

A. Last Monday night about midnight.

Q. About midnight?

A. Yes, sir.

Q. Where were you interviewed?

A. Atlanta, Georgia.

Q. Now Mr. Palmer, have you seen your former location in recent days or weeks?

A. Went down there day before yesterday.

Q. Is the Beech Grove tourist camp that you owned in existence now, or is it a part of the Fort Knox military reservation?

A. I understand that all of that ground was taken in by the Government and that place has been completely torn down.

Q. Has there been in the last year and a half or two years, a new tourist camp erected which is now known as the Beech Grove Tourist Camp?

A. Yes, sir, coming on in to Louisville, on the same highway, on the righthand side, there is a place
1830 called the Beech Grove that's operated by Mr. Carlisle.

Q. And was it Mr. Carlisle that you bought this place from?

A. That's correct, and sold it back to him.

Q. Now, from your own knowledge and from your knowledge of the tourist camp business, can you tell the jury whether or not this new Beech Grove tourist camp which is closer to Louisville, has not been constructed within the last twelve to eighteen months.

A. I can't give you the time of construction of that particular place.

Q. Approximately, from your examination—

A. It has been since the other was dismantled.

Q. Which would be in the last two years?

A. Yes, sir.

Mr. Brown: You may ask the witness.

Testimony of Edward S. Palmer

Cross-examination by Mr. Hogan.

Q. May I see your book, sir.

A. Yes, sir.

Mr. Hogan: Will the court indulge me a minute or two to look at this. The writing is rather fine on it.

Q. Now, Mr. Palmer, suppose you turn to this register or whatever it is, and tell this jury the names 1831 of registrants in that book.

A. The names of all the registrants are not in this book. This is not a register; this is a ledger.

Q. That is your financial ledger, is it not?

A. Yes, that is correct.

Q. There is not an automobile license or the name of a person in there, is there?

A. This is not the register; this is the ledger.

Q. You say you came that road several times?

A. I did what, please, sir?

Q. You came over that Dixie Highway several times?

A. Absolutely.

Q. Once a week?

A. Once a week. I come up every week-end to see my parents.

Q. Are there any tourist cabins or camps in a grove other than this place that you say you purchased between here and Elizabethtown?

A. You mean now?

Q. Or was there then, in 1931?

A. The only tourist camps that I can call in mind at all that was on that highway at the time that I purchased this property was one out on the Dixie Highway just a little distance out of Louisville, on the righthand side of the road, that was called Dixie. Just beyond that, I 1832 would say three or four miles, was another one, the name of it I don't recall, but I remember they were very small, frame houses, built up on posts. Neither one of those, as I remember, being in a grove.

Q. Is that all you recall as to tourist camps between here and Elizabethtown?

A. That's the only ones I remember being on that

Testimony of Edward S. Palmer

highway. Of course, I wasn't interested in any camps that were up. I was interested in a spot for another one.

Q. Did you keep a register of persons who registered at your tourist camp?

A. We always kept a register for one year.

Q. Where is that register?

A. They have been destroyed. We destroyed all of those registers after a year's time.

Q. So what you have brought into court is merely a ledger of what the material cost you and what you took in.

A. That's correct.

Mr. Brown: I would like to show these pictures to the jury.

(The pictures were passed to the jury.)

MRS. EDWARD S. PALMER was called as a witness in behalf of the Government, on rebuttal, and being
1833 duly sworn, was examined and testified as follows:

Q. State your name to the jury.

A. Mrs. Edward S. Palmer.

Q. Where do you live, Mrs. Palmer?

A. I live in Atlanta, Georgia.

Q. During the year 1931, where did you live?

A. In Springfield, Tennessee.

Q. At that time did your husband own any tourist camps near Nashville?

A. Yes, we owned one, South of Nashville.

Q. During the year 1931, did you have occasion on many or few occasions to come to Louisville, Kentucky?

A. Very often, particularly on week-ends.

Q. How would you come to Louisville?

A. In the automobile.

Q. Over what road?

A. Well, the Dixie Highway.

Q. When did you first notice and become acquainted with the Beechwood Inn?

A. Well, during those trips to Louisville, in the early part—the latter part of the winter or the early part of the

Testimony of Mrs. Edward S. Palmer

spring.

Q. When were you married to Mr. Palmer?

A. In February of 1931.

Q. And it was subsequent to your marriage to
1834 Mr. Palmer that you came to Louisville?

A. No, it was afterwards.

Q. Yes, after your marriage to Mr. Palmer.

A. Yes, that's right.

Q. That you came to Louisville. When did you first notice this Beechwood Inn?

A. Well, I don't know exactly, but it was on our trips to Louisville that we talked it over.

Q. When did you first examine any structures on the grounds on which the Beechwood Inn was located?

A. Well, the early part of the summer.

Q. Will you tell the jury what was on the grounds at that time?

A. One large structure, the front part of it was a restaurant and the back part of it had evidently been used for a dance hall, it was just a great big open place with a piano at one end, as I remember it, and some benches around the walls.

Q. Now with reference to any garage, was there a garage on there?

A. Yes. On the side towards West Point there was a very rickety structure that apparently was built for a garage, but it had a lot of old batteries and junk in it, and over that there were maybe two or three little bitty rooms.

1835 Q. I'll show you this lease and ask you if that was the original lease by which your husband bought this property from Mr. Carlisle, dated the 13th day of July, 1931.

A. That is correct.

Q. Now, at that time, and of your own knowledge prior thereto, would you tell the jury whether there were any tourist camps or cabins of any description on those premises.

A. There was not a cabin of any kind on the grounds.

Q. Now, after you had purchased those premises in

Testimony of Mrs. Edward S. Palmer

July of 1931, did Mr. Palmer, or did you, yourself, cause the name of that property to be changed?

A. Yes, we did.

Q. What did you change the name to?

A. To Beech Grove.

Q. Tourist Camp?

A. Yes, sir.

Q. Was that name changed and was that sign erected at any time prior to the time you all got it?

A. No, sir.

Q. Now, after you had gotten it and had changed that name, did you make arrangements to build cabins of any description?

1836 A. That's right, we did.

Q. When did you make those arrangements, Mrs. Palmer?

A. Well, I think in July of 1931.

Q. Now, did you purchase brick?

A. Yes, sir.

Q. From what concern?

A. The West Point Brick Company.

Q. Now, did you and your family live there, Mrs. Palmer?

A. Yes, my four children and Mr. Palmer and I.

Q. How long did you remain at those premises before you returned to Springfield, Tennessee?

A. Well, from the time that we came there in the latter part of July or the very first part of August, when we brought the children and camping equipment, we stayed there until just time to put them in school in Springfield, arriving back in Springfield-I would say the day before school opened.

Q. Which would be approximately what date in September?

A. Well, I would say the first week in September.

Q. Up to the time you left there early in September, were there any cabins or camps of any kind, character or description, ready for occupancy?

1837 A. No, sir.

Q. Now did you purchase any equipment to

Testimony of Mrs. Edward S. Palmer

equip those cabins?

A. The only thing that I bought and put in those cabins were some blankets that I bought myself in Springfield, Tennessee.

Q. I'll show you two sheets of paper and ask you to examine that and tell the jury whose handwriting appears thereon.

A. This is my handwriting.

Q. Do they reflect expenditures that you made to pay for certain equipment of the tourist cabins?

A. Labor and some building material.

Q. Now, will you examine that and tell the jury when, for the first time, you bought any equipment to furnish those cabins.

A. Now, will you repeat that question again?

Q. When you bought any equipment to furnish the cabins.

A. You don't mean to build.

Q. No, I don't mean to build.

A. Well, on September 14th, I gave the Springfield Woolen Mills a check for seven blankets.

Q. Now was that purchased personally by you in Springfield, Tennessee?

1838 A. Yes. Mr. Palmer and I went over to the mill.

Q. After September 14th, did you bring those blankets, being the first article that you purchased, back to the Beechwood tourist cabin?

A. I brought them to Louisville. I didn't bring them to the Beech Grove Camp.

Q. When was that?

A. Well, that was sometime, several days after the 14th of September. The exact date I can't tell you.

Q. Now, Mrs. Palmer, are you able to tell this jury when the first cabin was ready for occupancy that was erected on those premises?

A. In October 1931.

Q. Are you able to tell the jury whether or not, prior to October 1931, during the months of July, and August and September, any person other than your husband and your family ever occupied a single inch of any space within

Testimony of Mrs. Edward S. Palmer

any of the buildings on those premises?

A. Not in any of the buildings, no, sir.

Q. Did they occupy any space other than the buildings?

A. Well there was one old man, traveling in an old rickety Ford, came there with his daughter and wanted to know if he could pitch a tent on the grounds that night. We let him stay there that night, and then the next morning they left.

Q. Now with that single exception, during the entire time you were there up until October 1931 did any other person occupy a single inch of space on those grounds or in any of the buildings?

A. Absolutely not.

Q. When were you first interviewed in this case?

A. Last Monday night, about midnight.

Cross-examination by Mr. Hogan.

Q. Mrs. Palmer, when did you leave and go back to Springfield?

A. Just before school opened. I don't know the exact date.

Q. How long were you absent?

A. What do you mean by that?

Q. How long were you in Springfield?

A. You will have to ask that plainer. I don't know what you mean.

Q. You went to Springfield to put your children in school?

A. That is right.

1840 Q. How long did you stay?

A. How long was I gone to Springfield?

Q. Yes?

A. I stayed there the rest of the time. I never came back, only to visit Mr. Palmer's relatives.

Q. Then from the first part of September, after that you don't know what happened out there?

A. No; I just know that I came back and brought the blankets that time in September to Mr. Palmer's mother who was then living on Edenside Avenue. I had no actual

Testimony of Mrs. Edward S. Palmer

knowledge of the operation of the camp.

Q. Who would know about that?

A. Mr. Palmer Sr. then took the operation of the camp over.

Q. He is now dead?

A. Yes.

Q. Did he look after it during your absence?

A. Yes.

Q. How long did Mr. Palmer, your husband, stay in Springfield?

A. Well he stayed there continuously, only he did come back up and see that some electric lights were put in the cabins.

Q. So then you are not able to say, nor is your
1841 husband able to say what went on at that Beach Grove during your absence and during Mr. Palmer's absence?

A. The only time that I can speak positively as to what went on there is when we were on the grounds.

Q. And did Mr. Palmer Sr., your husband's father operate that place during your absence and that of your husband?

A. Mr. Palmer's father had someone there operating it for him, driving out practically every day to see about it.

Q. He had somebody in charge?

A. That's right.

Q. So you don't presume to know whether they rented part of those premises or not?

A. I told you I only knew what happened while I was there, and I did not leave there until September, and when I left there in September there were no cabins available to be used; they were under construction.

Q. But the employees of Mr. Palmer Sr. were in charge of the buildings on that ground?

A. That I cannot answer at all because I can't tell you what happened when I was not there.

The Court: I believe the witness is only trying to testify up until that first week in September.

1842 Witness: I can't go any further than that.

The Court: She admits that she does not know

Testimony of A. G. Shields

anything about what happened out there after the first week in September.

Mr. Hogan: That is what I wanted to know.

The Court: I think that's understood. If the witness was not there she certainly doesn't know anything about it.

Mr. Hogan: That is all, Mrs. Palmer.

Mr. Brown: I would like to introduce these pages as Government Exhibit No. 83, with leave to withdraw and substitute a copy. I would like to introduce this ledger as Government Exhibit No. 84, and this list of expenditures as Government Exhibit No. 85.

(The three above documents were handed to the Reporter, marked as indicated by Mr. Brown, and filed.)

A. G. SHIELDS was called in rebuttal by the Government and, after being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Brown.

Q. State your name?

A. A. G. Shields.

1843 Q. By what concern are you employed?

A. The West Point Brick Company.

Q. In what capacity?

A. Superintendent.

Q. As Superintendent of the West Point Brick Company, do you have custody of the books and records of that company?

A. Yes, sir.

Q. I hand you a ledger sheet and certain other documents, and ask you to examine those and tell the jury whether they are documents of the West Point Brick Company?

A. Yes, sir, these are our record sheets. That is, these are our ledger sheets.

Q. Are those sheets kept in the regular course of business?

Testimony of A. G. Shields

A. Yes, sir.

Q. And is it in the regular course of such business that those records are kept?

A. Yes, sir.

Q. And the dates that are entered thereon, were they entered contemporaneously with the transactions which are indicated?

A. Yes, sir, according to our delivery tickets. Our delivery tickets are posted and charged to the customer on the ledger sheet.

1844 Q. I will ask you to refer to your records and tell the jury when the first bricks were sold by your company to Mr. Edward S. Palmer for the erection of the Beach Grove Tourist Camp?

A. Well they started delivery on, according to our records, on August 26, 1931.

Q. That is the first time, according to your records, that any buildings, any cabins, were erected out of materials from your company to Mr. Palmer's place?

A. That is right.

Q. Now, after that, will you tell the jury what other deliveries were made by your company to the Beach Grove Tourist Camp owned by Mr. Palmer? Suppose you just read on down?

A. Well our ledger entry posting was on August 29th, that is for total of 3500 brick delivered between August 26 and August 29, and on September first 1,000, September 16th, 5,000; and then on September 18th we gave him credit for a check for \$38.25. On September 25th we delivered 4,000 more; and on October 5th we credited another check of \$6.50. That cleaned out that transaction for that year.

Q. Will you tell the jury the last material
1845 you delivered there for the erection of those cabins?

A. On April 28th 1932, 600 brick; April 30th 300 brick; on June 15th, credit check for \$7.60 checked out the account.

Q. Now that is the year following 1931 that you have just testified about?

A. Yes.

Q. Now do you have the signed duplicates of the de-

Testimony of A. G. Shields

livery tickets?

A. We do not have. The tickets that we have are the ones that were signed by the man who delivered them, the teamster and the truck driver.

Q. They are a part of your records?

A. Yes.

Q. All right. Will you refer to those records and tell the jury when the first delivery of brick was made to the Beach Grove Tourist Camp, owned by Mr. Palmer?

A. August 26th.

Q. What year?

A. 1931—500 brick.

Q. Now that was the first delivery—

A. Yes.

Q. By your company of any brick to the Beach Grove Tourist Camp?

1846 A. Yes.

Q. And I will ask you to examine your records and tell the jury whether or not all deliveries of brick were subsequent to that date, extending on up to 1932, as you have told about?

A. These were the first delivery tickets and there was not anything delivered to Mr. Palmer prior to that.

Q. And all other tickets are subsequent to that first ticket, are they not?

A. That is right.

Mr. Brown: I would like to introduce these ledger sheets as Government Exhibit No. 86 with leave to withdraw and substitute a copy; and the delivery tickets as Government Exhibit No. 87.

(The above described documents were handed to the Reporter, marked Government Exhibits Nos. 86 and 87, and filed with the record.)

Cross-examination by Mr. Hogan.

Q. Did you go personally to those premises on the delivery of those bricks?

A. Why those tickets are signed by the customer that he received them.

Testimony of A. G. Shields

1847 Q. Well, do you live at West Point?

A. I live at the brick plant.

Q. Where is that?

A. About three quarters of a mile out of West Point.

Q. Before these brick were delivered there, do you know whether or not there were any structures existing on those premises?

A. I don't recall any. I know there were not any brick ones.

Q. You don't know or you are not prepared to say what was there before the brick was used?

A. No.

The Court: Members of the jury do any of you feel strongly against a night session tonight, or do you all think that you could handle a night session tonight for about two hours? The purpose would be—I believe it would be possible if we hold a session tonight we might be able to get through with this case tomorrow night. Mr. Thornbery, how do you feel?

M. Thornbery: All right.

The Court: Mr. Mattingly, how do you feel?

Mr. Mattingly: All right.

1848 The Court: If we don't finish tomorrow night we might go on over to the week-end, that is the reason I was asking you. I don't want to cause any of you any trouble or any great inconvenience. Is there any one of you that would object to it? Or feel that it would be detrimental to your health or cause you to be sick tomorrow for any reason?

Suppose we take a show of hands. How many of you would prefer to come back tonight and finish up with the case?

(Every juror raised his or her hand.)

It looks like all of you. Now will you gentlemen stay on for about 20 minutes longer now, and then adjourn until 7:30 tonight.

1849 DR. E. E. LANDIS was called in rebuttal by the government and, after having been first duly sworn, was examined and testified as follows:

Testimony of Dr. E. E. Landis

Direct Examination by Mr. Brown.

Q. State your name to the jury?

A. Dr. Edward Everett Landis.

Q. Where do you live, Dr. Landis?

A. I live at No. 7 Hawthorne Hill, Louisville, Kentucky.

Q. Of what school or schools are you a graduate?

A. I graduated from North Central College, and from Northwestern University Medical School—

Q. (Interrupting) When did you graduate from the Northwestern University Medical School?

A. In 1934.

Q. Did you graduate from there as an M. D.?

A. Yes, sir.

Q. After you graduated from Northwestern Medical School where did you have your internship?

A. At the Kansas City General Hospital, at Kansas City Missouri.

Q. How long did you stay at the Kansas City 1850 General Hospital?

A. Twelve months.

Q. Did you take any post graduate work?

A. Yes, sir. I had a year of post graduate training under the National Committee of Mental Hygiene and at the Louisville Hygiene Clinic and at the Louisville University Medical School; and I had a year of post graduate training at the University of Pennsylvania, under the Rockefeller Foundation, in neurology.

Q. What training have you had in psychiatric work other than you have related?

A. I spent two years as Assistant Physician in State Hospital No. 1 at Fulton, Missouri. Following that, I was appointed on the faculty at the University of Louisville as an instructor in psychiatry, and at the present time I am still on that staff and I am Assistant Professor of Psychiatry.

Q. That is at the University of Louisville School of Medicine?

A. Yes, sir.

Testimony of Dr. E. E. Landis

Q. Are you instructor in any mental hygiene or psychiatric courses outside of the University of Louisville Medical School?

A. In the last year I was instructor in the
1851 University of Louisville School of Social Administration.

Q. Have you had any experience with the Louisville and Jefferson County Children's Home, commonly referred to as Ormsby Village?

A. Yes, sir, I am at present director of the Department of Psychiatry of that institution.

Mr. Brown: All right, Doctor, you may be excused and returned at 7:30 tonight.

DR. ISHAM KIMBALL was called in rebuttal by the government and, after having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Brown.

Q. State your name to the jury?

A. Dr. Isham Kimball.

Q. Where do you live?

A. Lakeland, Kentucky.

Q. What position do you hold?

A. I am Superintendent of the Central State Hospital at Lakeland.

Q. How long have you been Superintendent at Lakeland?

A. Not quite 3 years.

1852 Q. Of what schools or colleges are you a graduate?

A. University of Alabama.

Q. Did you get any degrees there, Doctor?

A. Doctor of Medicine.

Q. Have you, since your graduation, specialized in any field?

A. Psychiatry.

Q. Are you a member of any psychiatric associations?

Testimony of Dr. Isham Kimball

A. I am a member of the American Psychiatric Association, and I am a fellow in the American Psychiatric Association.

Q. Is there an association called the Kentucky Psychiatric Association?

A. Yes, sir, and I am a member of that and on the Board of Directors of the Kentucky Association.

Q. When was that association organized, Doctor?

A. In 1936, I believe.

Q. Were you the first president of that association?

A. I was.

Q. Now did you serve in the last war, Doctor?

A. I did.

Q. Did you have service abroad?

1853 A. I was about two years in France.

Q. After you returned, and since that time, have you specialized in psychiatric medicine?

A. I have.

Q. Did you at any time serve on the staff of any government hospitals or state institutions?

A. I served on the staff of a government hospital at Gulfport, Mississippi; and at Northport, New York.

Q. Now at Northport, New York, was that mental patients?

A. Entirely. Exclusively for mental patients. So is the hospital at Gulfport.

Q. Now at Alexandria, Louisiana, have you ever served there?

A. I was Chief of the Neuropsychiatric Service at Alexandria, Louisiana.

Q. Now, with reference to any experience here in Kentucky, did you have any experience in supervising in a government hospital at Lexington, Kentucky?

A. Yes I was clinical director of the government hospital at Lexington.

Q. For what period of time?

A. About 4 years.

Q. Now after that where did you go?

1854 A. I went from there to Gulfport, Mississippi, and I returned there and I was clinical director

Testimony of Dr. Spafford Ackerly

there from about 1938 until the time I came here.

Q. And since 1940 or 1941 you have been continuously Superintendent of the Central State Hospital at Lakeland.

A. That is right.

Mr. Brown: All right, if you will be back here at 7:30 tonight, please.

DR. SPAFFORD ACKERLY, was called as a witness in rebuttal by the government and, after having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Brown.

Q. State your name?

A. Spafford Ackerly.

Q. Where do you live?

A. 1319 Willow Avenue.

Q. What is your profession?

A. I am a physician and psychiatrist.

Q. What position as a psychiatrist do you now hold here in the City of Louisville?

1855 A. Director of the mental hygiene clinic and Professor of Psychiatry in the University of Louisville School of Medicine.

Q. Of what college or colleges are you a graduate?

A. Wesleyan University and Yale Medical School.

Q. When did you graduate from the Yale Medical School?

A. 1925.

Q. Since that time have you continuously followed your profession?

A. Yes, sir.

Q. After your graduation what positions did you hold?

A. Internship in a New York Hospital. Worcester State Hospital. The National Hospital in London. The University of Vienna Hospital. The Yale Institute of Human Relations in New Haven, Connecticut. As Research Associate and Assistant Professor, and then the University of Louisville.

Testimony of Dr. Spafford Ackerly

Q. And you have been continuously in Louisville since 1932?

A. Yes.

Q. Of what learned societies are you a member? Just a representative sample is all that is necessary.

1856 A. The American Medical Association, the Southern Medical, the Kentucky Medical and the American Psychiatric Association, and the Association of Research on Nervous and Mental diseases, the Central Psychiatric Association, American College of Physicians, American Author Psychiatric Association, and Association for Research and Clinical Medicine, and the Kentucky Psychiatric Association.

Q. I think that is enough, Doctor.

Mr. Brown: Now, Your Honor, I can go into the examination of Mr. Robinson with Dr. Ackerly, unless you feel that we are running too close to the time. I also have Dr. Gardner to qualify.

The Court: I think you had better stop now with the qualifications of this witness.

DR. W. E. GARDNER, was called as a witness in rebuttal by the government and, after being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Brown.

Q. State your name to the jury?

A. Dr. W. E. Gardner.

Q. Where do you live?

1857 A. Louisville, Kentucky, 1405 Rosewood.

Q. Where were you born?

A. Hardin County, Kentucky.

Q. Of what schools or colleges are you a graduate?

A. Well I am a graduate first of Georgetown College at Georgetown, Kentucky, and then the University of Louisville School of Medicine.

Q. After your graduation, what post graduate work did you do?

Testimony of Dr. W. E. Gardner

A. After serving several years as physician and superintendent of the Central State Hospital at Lakeland, I went to New York City and did post graduate work in nervous and mental diseases, and then came back to Louisville and located here in private practice in these specialties; and then I would occasionally, during the summer, take short post graduate summer courses, in New York, Boston, Ann Arbor, and Chicago.

Q. When did you begin to teach in the University of Louisville?

A. 1913.

Q. Since that time how long have you taught at the University of Louisville?

A. Well continuously since 1913.

Q. For the last few years, what type teaching
1858 have you done?

A. It has been altogether psychiatry. I have taught both mental and nervous diseases and since 1927 I have been clinical professor and head of the Department of Psychiatry and Mental Diseases at the University of Louisville School of Medicine.

Q. At any time did you conduct any neuropsychiatric sanitarium?

A. I did for several years. I was head of the Neuropsychiatric Sanitarium of Louisville, which I organized in 1919, and I was active head of that until 1925, and I still have connection with it.

Q. Are you on the staff of any Louisville Hospitals?

A. Louisville General Hospital, Norton Infirmary, St. Joseph's Infirmary and the Kentucky Baptist Hospital.

Q. Doctor, have you ever been president of the Louisville Society for Mental Hygiene?

A. I have.

Q. Have you ever been president of the Kentucky State Medical Association?

A. I was.

Q. Do you hold any fellowship in any learned society?

1859 A. I am a Fellow in the American Medical Association, the American College of Physicians and

Testimony of Dr. W. E. Gardner

the American Psychiatric Association.

Q. Did you ever hold any position on the Board of Examiners of the American Psychiatric Association?

A. I was for 5 years a member of the Board of Examiners of the American Psychiatric Association and Chairman of the Board for 3 years.

Q. Have you ever served as an American delegate to any foreign countries?

A. I served as a delegate to the Second International Congress on Mental Hygiene in Paris, France, in 1937.

Q. After that did you have any occasion to visit any psychiatric or neuropathic clinics on the continent?

A. I did. I visited the psychiatric clinic in that city, and later in Vienna, Switzerland, Belgium, England and Scotland.

Mr. Brown: All right, Doctor, please return at 7:30 tonight.

The Court: Now Members of the Jury, we will adjourn now until 7:30 tonight, and give you a short rest
1860 and, as I have said, continue to watch your diet and we will try to have a short session tonight.

Do not talk about this case among yourselves or with anybody or allow anyone to talk about it in your presence. We will adjourn until 7:30 p. m.

Convened pursuant to adjournment and continued with the further proceedings as follows:

DR. E. E. LANDIS, DR. ISHAM KIMBALL, DR. SPAFFORD ACKERLY and DR. W. E. GARDNER, were called back into the court room and took the witness chairs and were examined and testified as follows:

Mr. Brown: Over the recess I have exhibited to these four gentlemen the government exhibits which have already been introduced into evidence. All of those exhibits have been read to the jury, the ones that I am going to refer to, and I would like the privilege of not repeating those exhibits in my hypothetical question.

The Court: You may refer to those exhibits. The jury

Proceedings

has had them and understand what they are and the doctors have read them. Is there any question about repeating the exhibits again?

Mr. Hogan: No, Your Honor.

1861 Direct Examination by Mr. Brown.

Q. Now, Doctor, I am going to ask you gentlemen to bear in mind that this hypothetical question I am going to propound to you, that you assume the following facts as having been testified to:

The defendant, Thomas Henry Robinson Jr., was born in Nashville, Tennessee, on May 5, 1907, the only son of Mr. and Mrs. Thomas Henry Robinson Sr.; that his father had a position, a responsible position, with the Nashville Bridge Company; that the family resided in a very good residential district in the City of Nashville; that as a youth and young man he attended Sunday School and church. He joined a Boy Scout Troop, and his grammar school career was practically in all respects normal. At 14 years of age he contracted tuberculosis and for approximately a year he was a patient in a tuberculosis sanitarium. He was released from this institution in 1923, at which time the tuberculosis had been arrested.

He lost a year's schooling while in the hospital. Upon his release, by private study and tutoring, he made up his studies. In the fall of 1923 he entered the Wallace Preparatory School, a private school for boys preparing for college in the City of Nashville. He obtained good

1862 grades and would have graduated except that he was minus one credit.

Early in his life, at approximately the age of 16 years he received as a gift from his mother a \$800.00 Buick Coupe automobile. During at least one of his summer vacations he worked for the Du Pont Company, probably in the capacity of chain man in a surveying outfit.

He entered Vanderbilt University as a special student in September 1926 and began to study law. He became a member of Pi Kappa Alpha social fraternity and also a member of Eta Gamma legal fraternity. He was a good student at the University, making average or better than-

Proceedings

average grades. He made a grade of ninety in criminal law.

Approximately in June 1926, or a short time prior thereto, he met a young woman. He picked her up as she was waiting for a car and drove her home and, thereafter, had a number of engagements with her. She was below defendant Robinson's in the social strata. He and this young woman engaged in many acts of sexual intercourse. The young woman finally became pregnant.

On January 18, 1927 the young woman, her mother and aunt and two deputy sheriffs who were armed with a warrant called at the fraternity house on the campus of

1863 Vanderbilt University, took Robinson Jr. out of the fraternity house, placed him in a car, took him to the county building where a marriage license was secured and defendant Robinson Jr. and the young woman were married on that date by a Justice of the Peace.

Robinson Jr. thereafter did not live with this young woman. She gave birth to a baby daughter on January 24, 1927.

Defendant Robinson Jr. continued his school career at Vanderbilt, and approximately March 1, 1927, Robinson Jr. through his father Robinson Sr. caused a petition to be filed in Davidson County, Tennessee.

Thereafter a trial was had in which charges were made that the young woman was unchaste and that the baby was a nine months baby and that the defendant Robinson had only known this young woman for a period of seven months. The trial was a vicious one where the character and reputation of the young woman was attacked. On July 6, 1927, the jury found in favor of the young woman, and found that Robinson Jr. was the father of the child and that, except for the acts of sexual intercourse that she had indulged in with Robinson Jr., she had been theretofore chaste. Motion for a new trial was filed on behalf of Robinson Jr. which was sustained by the trial judge.

1864 Thereafter no steps were taken on behalf of Robinson Jr. for annulment and later the couple were divorced, in which action Robinson Jr. paid all the costs.

Proceedings

Thereafter for a period of approximately a year and a half after this so-called forced marriage; he continued going to school at Vanderbilt, studying law. He quit the law school November 5, 1928. Prior to that time he had met and was going with one Frances Althausser, a girl approximately 17 years of age and he married Miss Althausser on January 9, 1929.

He obtained employment at the Wayne Lumber Company in January 1929. His work consisted of timekeeping and along clerical lines. He remained in that employ for about three or four months.

In March 1929, in Nashville, Tennessee, he appeared at the home of Mrs. Mary Lamb. He exhibited a badge and claimed to be a deputy sheriff. He had a revolver on his person which was stuck under the belt of his trousers. He told Mrs. Lamb that he desired to search the premises for the purpose of discovering illegal liquor. She protested this action and indicated a desire to call her husband on the telephone. Robinson Jr. would not permit her to do so and compelled Mrs. Lamb and her maid to sit in the front room. He searched the bedrooms of the house and obtained a large amount of valuable jewelry.

1865 After he had searched the bedrooms he demanded and received from Mrs. Lamb the keys to her automobile which was parked in the driveway and, thereafter, ordered Mrs. Lamb and her maid to the attic of the house. He went out and drove away in the automobile belonging to Mrs. Lamb.

On the same afternoon in the automobile of Mrs. Lamb he drove to the home of Mrs. Waggoner in the City of Nashville. He produced at this house fictitious warrants, gained entrance and compelled Mrs. Waggoner to permit him to search the premises. Mrs. Waggoner and her maid were the only ones present in the house. For the most part he confined his search to the bedrooms and took a large amount of valuable jewelry belonging to Mrs. Waggoner, and departed.

Thereafter, after a period of some weeks he remained in the City of Nashville and was recognized on the street by either Mrs. Waggoner or Mrs. Lamb which resulted in

Proceedings

his being arrested on June 6, 1929.

Thereafter, on June 10, 1929, two indictments were returned by the Grand jury, one charging him with having impersonated an officer at the Lamb home and obtaining certain articles of jewelry; and the other indictment charging him with having committed robbery at the Waggoner home. The amount of jewelry obtained by him was in excess of \$7000.00.

Both offenses were felonies under the laws of 1866 the State of Tennessee and upon conviction Robinson Jr. could have been sentenced to a state penitentiary for a goodly number of years.

Robinson Sr. and an attorney representing Robinson Jr. made representations to the prosecuting attorney, and it was mutually agreed between them that Robinson Jr. would be committed to the Central State Hospital for a period of two weeks or ten days for observation. As a result, legal steps were taken and the matter was presented before the criminal judge on June 10, 1929, who ordered Robinson Jr. committed to the Central State Hospital for the Insane at Nashville, Tennessee, for observation.

Robinson Jr. remained at the Central State Hospital for the Insane until June 24, 1929, at which time he was returned to the custody of the criminal court. On June 27, 1929 a jury was impaneled in the criminal court to hear evidence on the question of insanity. The jury did hear the report and, as a result, returned a verdict that Robinson Jr. was insane and too dangerous to society to be set at large. The court then issued a decree to the effect that the defendant Robinson Jr. be committed to the Keeper of the Central State Hospital for the Insane for the Middle District of Tennessee in whose custody he shall remain as other patients as long as he is mentally 1867 insane, but should his mental condition become normal at any time in the future, the said superintendent will return the said defendant to the sheriff or jailer of Davidson County, Tennessee.

While confined in the Central State Hospital from June 10, 1929, until he was finally released under circumstances to be set out hereinafter, on May 20, 1930, a subjective

Proceedings

history was taken, staff considerations were given to the case, and as a result Robinson Jr. was diagnosed as suffering from schizophrenia and/or dementia praecox.

On June 27, 1929, simultaneous with the commitment of Robinson Jr. as above indicated to the insane institution nolle prosee was entered to the indictment which had theretofore been returned on June 10, 1929, charging him with having impersonated an officer at the Lamb residence. This left one indictment outstanding.

After the confinement of Robinson Jr. in the Central State Hospital, some of the jewelry was recovered and restitution was made.

Later, Robinson Sr. and Robinson Jr. and the attorney for Robinson Jr. met with the prosecuting attorney on one or more occasions before the adjudication of insanity was entered on June 27, 1929. It was understood and mutually agreed between them that Robinson Jr.

1868 should remain for some period of time. The prosecuting attorney had known Robinson Jr. from childhood and the youth had visited the prosecuting attorney's office when the latter was in the private practice of law and Robinson Jr. was going to Vanderbilt Law School.

On April 28, 1930, Robinson Sr. filed a petition in the County Court at Nashville, Tennessee, praying that Robinson Jr. be declared legally insane in the County Court and that he, the father, be appointed as guardian. Life, by that time, for Robinson Jr. was not pleasant at Central State Hospital in that he was complaining of the conditions; his father had appeared at the institution and protested the treatment afforded the youth.

On May 7, 1930, there was a hearing had in the County Court before a jury. As a result of certain testimony the jury found Robinson Jr. insane on this date, namely May 7, 1930.

On May 8, 1930, the remaining criminal charge outstanding against Robinson Jr. in the criminal court was nolle prossed by the prosecuting attorney.

On May 20, 1930, Robinson Jr. was released from the Central State Hospital and taken to the Western State Hospital at Bolivar, Tennessee, as a pay patient.

Proceedings

As a result of the nolle prossing of the criminal
1869 indictments, the superintendent was instructed to
release him on May 20, 1930, wherein the superintendent of Central State Hospital advised the Commissioner of State Institutions that inasmuch as all criminal charges against Robinson had been nolle prossed, Robinson Jr. could no longer be held in the criminal insane institution.

On May 25, 1930, Robinson Jr. was received at the Western State Hospital at Bolivar, Tennessee. He was received there as a pay patient. He remained there for approximately a period of 3 months.

Robinson Jr. was released from the Western State Hospital on August 24, 1930, upon the insistence of Robinson Sr. and against the desires of then superintendent of the hospital.

As a result of observation had of Robinson Jr. at the Western State Hospital, it was determined by the psychiatrist in charge, and by reason of the staff recommendations, that he was a psychopathic personality without psychosis.

While he was confined in the Western State Hospital, Robinson Jr. was granted many privileges, which he consistently overstepped. He refused to do certain manual work such as scrubbing the dining room, but offered to supervise it.

1870 For a period of several months he was permitted to work for a construction company in a clerical job, which construction company was engaged in building buildings on the institutional grounds.

After Robinson Jr. was returned from the Western State Hospital by his father, he secured one or two jobs apparently of short or minor duration and did not hold them very long and apparently he was in and around Nashville, Tennessee until the latter part of May 1931, when he worked one day for the Serval Company at Evansville, Indiana. Then he came to Louisville, Kentucky. His father was acquainted with Mr. C. C. Stoll, President of the Stoll Oil Company. Early in June, about the 1st of June 1931, Robinson Jr. obtained a position with this company as a filling station attendant. He kept this job for about six weeks, voluntarily leaving this position to take

Proceedings

a position with the Mutual Life Insurance Company at Louisville, which job he kept for about a month and a half.

He then went to Chicago where he secured a position with an oil burner company salesman.

In the fall of 1932 he worked for a business college in Nashville, soliciting students on a commission basis. After this there were several trips to Chicago in an effort
1871 to secure positions, but nothing very satisfactory ever developed.

On January 1, 1933, he and his wife, Frances Robinson, worked as custodians in an apartment hotel in South Bend for a period of about three months.

After this, Robinson Jr. went to Chicago and continued efforts there to obtain employment, without much success.

On August 27, 1933 he took an examination for a position with the Tennessee Valley Authority and attained very high grades, an average of 91.

On October 31, 1933 he obtained a position as time-keeper doing general clerical work with the E. I. Du Pont de Nemours & Company, Old Hickory, Tennessee. He remained on this job until April 23, 1934. At that time it came to the attention of his employer that he had been previously charged with criminal offenses. Since Robinson Jr. was under bond, it was necessary for his employer to discharge him. He offered to reemploy him to another position which was not bond employment but Robinson Jr. refused.

Early in the spring of 1934 Robinson was again charged with assault on a young woman living in Nashville, Tennessee. This young lady made complaint to the prosecuting attorney and an indictment was returned by the Grand

Jury on May 22, 1934, charging him with having
1872 made an assault upon the girl and after putting her in fear and danger of her life, of stealing her jewelry.

During that same period of time it came to the attention of the Deputy Attorney General of Nashville, Tennessee that there were at least two additional charges involving young women. At that time, in conference with Robinson Jr. and Robinson Sr., Robinson Jr. told the deputy Attorney General that he was not in the least fearful of be-

Proceedings

ing charged with any crime by these young women; that if they did so charge him he would say that he had picked them up in his car and taken them out to the country and there voluntarily had sexual intercourse with him and thereby ruin their reputation.

Shortly thereafter, Robinson Jr. while at home one evening was approached by a deputy sheriff who had a warrant for his arrest. He jumped from the back window of his home and went to his wife's home and he immediately went to Chicago.

One indictment which was returned against Robinson Jr. was tried in his absence; a plea of not guilty was entered through his attorney and the Deputy Attorney General concurred in that plea of not guilty.

Robinson Jr. claimed that these charges in the **1873** spring of 1934 were frame-ups and sought to tear down everything that he had done to rehabilitate himself and that finally when the detectives came to his house one night to arrest him he had bolted as I have heretofore indicated to you.

He made his way to Chicago, Illinois, and there attempted to get a job. He did secure a position as janitor at the Forsythe Building in Oak Park, Illinois, on May 7, 1934, and held this position until August 18, 1934.

His wife came to Chicago, Illinois, from Nashville and joined him and he continued to do work at the Forsythe Building as I have heretofore indicated.

Witnesses produced by the government have said that during this period he was perfectly normal in all respects and knew the difference between right and wrong and realized fully the consequences of any criminal act.

After he had been working at this job at the Forsythe Building for a month under his correct name, he moved to a furnished apartment in Chicago with his wife. They assumed the aliases of Mr. and Mrs. John Ward, Jr.

On September 20, 1934 in Chicago he rented an automobile from a U-Drive-It Company under the alias of John Ward. In this car he and his wife drove to Indianapolis where he engaged an apartment which was subse-
1874 quently used as the hideout apartment to which he

Proceedings

took Mrs. Alice Speed Stoll. This apartment was rented under the name of Thomas Kennedy. On October 7, 1934, Robinson, Jr. and his wife drive from Indianapolis to Louisville, Kentucky. He had substituted the Illinois plates of the U-Drive-It car with Indiana automobile license plates.

His wife, on October 8, 1934, left Louisville by train to go to her home in Nashville, Tennessee. Robinson Jr. registered at a Louisville hotel under an alias.

He visited the home of Mr. C. C. Stoll and Mr. George Stoll under the guise of being a telephone repairman.

On October 10, 1934, at approximately the hour of 2 p. m. he appeared at the Bardstown Road Station of Mr. Hugo Kottke and there from him obtained directions to the home of Mrs. Alice Stoll on Lime Kiln Road.

On October 10, 1934, Mrs. Alice Stoll was kidnapped by Thomas Robinson Jr.

Mrs. Stoll was taken from her home, bound and gagged after having suffered two severe blows by a pipe on her head. She was put in the back of a car, bound, covered by a blanket and newspapers and transported to Indianapolis, Indiana.

About October 7, 1934, prior to leaving the hideout apartment in Indianapolis he had prepared a two-
1875 page ransom note. At the time of the kidnapping of Mrs. Stoll he left in her home the ransom note which you have heretofore read, being Government Exhibit No. 33.

Arriving at the Indianapolis, Indiana, garage near the apartment, he left Mrs. Stoll for a few minutes telling her he would bump her off if she made a sound. He returned and said the time was not right to take her into the hideout apartment. He drove her around the suburbs of Indianapolis, during which time Robinson Jr. removed the tape from Mrs. Stoll's mouth and the wires from her wrists. He demanded that she sit in the front seat.

When questioned by Mrs. Stoll as to why he had kidnapped her he replied he did it for the money.

Mrs. Stoll remained a kidnap victim in this hide out until October 16, 1934. On many different occasions, he,

Proceedings

Robinson Jr., had occasion to leave the apartment. Mrs. Stoll, bound, gagged, wired to a chair, was left in a closet which was closed.

She was compelled to write a letter to her husband and a letter to her friend, Miss McHenry, and to send her wedding rings in a letter to a person who was described to Mrs. Stoll as an intermediary who was in fact Thomas H. Robinson Sr.

Robinson Jr., in an effort to get in touch with **1876** the Stoll family, asked her who he should call and she suggested that Miss McHenry be called.

Thereafter Miss McHenry received several calls in which effort was sought to expedite payment of the ransom money.

Fifty Thousand Dollars in ransom money was raised by Mr. W. S. Speed, the father of Mrs. Stoll, and was shipped by express to Nashville, Tennessee, and there delivered to the possession of Thomas H. Robinson Sr. who, in turn, gave the money to Robinson Jr.'s wife. The latter, by train and by automobile, arrived at Indianapolis, Indiana, on the morning of October 16th, 1934 at about 9 o'clock or so. She called at the hideout apartment and gave the money to Robinson Jr.

Robinson Jr. then took the ransom money, the entire \$50,000, and tied Mrs. Stoll in the closet in the apartment and left Mrs. Stoll there with his wife, Mrs. Frances Robinson. He returned after about thirty minutes, at which time Mrs. Stoll was still tied to the chair in the closet.

During the time Mrs. Stoll was held in the apartment at night she would be tied in bed, each wrist being tied to the bedsprings, and attached by a cord from her wrists to Robinson Jr.'s wrist.

On the morning of October 16, 1934, after Robinson Jr. had left the second time, Mrs. Stoll and Mrs. **1877**

Robinson remained in the apartment for approximately two hours.

They then left, Mrs. Robinson Jr. having unbound Mrs. Stoll and they went to the home of the Reverend and Mrs. Clegg, a relative of Mr. Berry V. Stoll, Mrs. Stoll's husband.

Proceedings

The name of the Reverend and Mrs. Clegg had appeared in the newspapers which defendant Robinson Jr. had brought to the hideout apartment in Indianapolis.

Dr. and Mrs. Clegg drove Mrs. Stoll and Mrs. Robinson toward Louisville on the afternoon of October 16, 1934. Mrs. Robinson Jr. had at that time a packet of the ransom money, containing approximately \$470.00. All of the remaining amount of the \$50,000 had been removed by Robinson Jr. at the time he left the apartment.

Mrs. Stoll was returned to her home on October 16, 1934, by Agents of the Federal Bureau of Investigation who had previously ordered all persons off of the Stoll premises with the exception of Mr. Berry V. Stoll and themselves.

Robinson Jr., after he left the apartment, went to Springfield, Ohio, went to a tourist home and registered under an alias and stored the car in a garage. He remained there only for a short time and then he made

1878 his way by a route unknown to New York City. At

New York City he registered at a large hotel under an alias. On New Year's eve night in 1934 in a New York night club he met a woman by the name of Jean Breese. Thereafter in New York City he lived with Jean Breese under aliases at different hotels and apartments.

After several months he and Jean Breese made a trip to California. There they stayed at various hotels and other places under aliases. In California he bought a Three-Thousand Dollar Packard, for which he paid cash.

The two of them made a trip back to New York and disposed of it there and at that time bought a Plymouth. He remained around New York for several months, under aliases, then motored back to California.

In both New York and Los Angeles, Robinson Jr. rented safety deposit boxes under aliases where various sums of the ransom money was hidden, \$7500 or \$10,000.

Before spending any ransom money, Robinson Jr. took great pains to exchange it for good money, so to speak. He would follow such a procedure of going to a telegraph office at Los Angeles, sending a wire to himself at San Francisco, wiring a large amount of money, and then call

Proceedings

at San Francisco and pick up the money. On at least one occasion he gave his mother a large amount of money
1879 which he had secured as a result of exchanging ransom money. He washed this money off and then treated it in order to obliterate any of his fingerprints. He gave to other members of his family and Jean Breese's family large sums of money.

On May 11, 1936, Robinson Jr. was apprehended at Glendale, California, by Agents of the FBI. Jean Breese, the woman he had been traveling with, revealed his identity and location to the FBI. He was living at the time of his apprehension in a furnished house under an alias.

At the time of his apprehension he had on his person a loaded forty-five automatic pistol. In the house was found a loaded shotgun and at least three other loaded revolvers. He also had in his house several thousand dollars of the ransom money.

Following his apprehension he was brought by plane to Louisville, Kentucky, and on May 13, 1936, entered a plea of guilty and was sentenced to life imprisonment.

Later a writ of habeas corpus was brought by Robinson Jr., and it was decided by the California Court that his constitutional rights were not protected in that he had not been adequately represented by counsel of record. This sentence was set aside and he was remanded to the

United States District Court for the Western Dis-
1880 trict of Kentucky for plea.

Upon the arrival of Robinson Jr. to the United States Penitentiary at Atlanta, Georgia, he was given a physical examination and a mental examination. He was immediately after that transferred from the U. S. Penitentiary, at Atlanta, Georgia, to the United States Penitentiary at Leavenworth, Kansas.

On June 19, 1936, he was examined by a psychiatrist at Leavenworth, at which time he was found to be respectful, polite, and agreeable; he was not depressed; at the same time he was not facetious; that he understood perfectly well his situation; nothing was observed to indicate any mental illness; that he gave the impression of apparent constitutional lack of responsiveness to social demands,

Proceedings

truthfulness, decency, and consideration of others; that he was found to be unable to profit by his experiences; that he lacked continuity of purpose of a domestic, occupational and social level.

The conclusion was reached by the prison psychiatrist at Leavenworth that Robinson Jr. was as of that time a constitutional psychopath, inferior, with criminal instincts, irresponsible, hyper-sexual activities, and emotionally unstable.

Robinson Jr. was transferred from Leavenworth, 1881 Kansas, to the United States Penitentiary at Alcatraz. On July 25, 1939, he was examined by a psychiatrist, who found him to be a psychopathic personality and an individual who knew right from wrong, and was able to appreciate the consequences of any criminal act.

At the United States Penitentiary at Leavenworth, Robinson Jr. wrote a letter to Sanford Bates, the then Director of the Bureau of Prisons, being Government Exhibit No. 78. The letter is dated July 1, 1936. The following portion is read: "For your information I would like to state this: That I am not a mental case; I have no psychosis; and that former decree of insanity was the result of my father imposing on his friendships."

That is the evidence which has been introduced by the government.

It is claimed by the defendant Robinson Jr. that as a result of this forced marriage he became irritable, that he had suffered a number of diseases, that he was moody, withdrawn, and that he was subject to sudden fits of temperament.

It is further claimed by Robinson that in the year 1931 he was employed by the Stoll Oil Company and that he had become acquainted with Mrs. Alice Speed Stoll; that they had gone on at least one occasion to the Beach 1882 Grove Tourist Camp on the Dixie Highway in Louisville, Kentucky, where they had indulged in acts of sexual intercourse.

It has been shown by the government witnesses that at the time of the transaction the tourist camp in question was not in existence and no cabins were even built.

Proceedings

It was further claimed by the defendant Robinson Jr. that he was suffering with a delusion that he was a reincarnation of Patrick Henry, and that at any time he drank beer, he drank only Patrick Henry beer; that on October 7th, and for a short time prior thereto, he was suffering under the delusion that Mr. C. C. Stoll had prevented him from obtaining any employment, although there was shown to be in his possession and in the possession of the Tennessee Valley Authority a letter from Mr. Stoll recommending Robinson Jr. highly; that he determined, as a matter of revenge against Mr. Stoll, to kidnap him.

He came to Louisville and examined Mr. C. C. Stoll's home and he was away. He examined the home of Mr. George Stoll. He then went to the Kottke garage on the Bardstown Road and received directions to Mrs. Stoll's home; that he went to Mrs. Stoll's home and there posing as a telephone man gained entrance; that he went upstairs and was greeted by a smile, and that the recognition was mutual. After talking for approximately an hour it **1883** was agreed by Robinson and Mrs. Stoll that she would voluntarily go with him. That Mrs. Stoll was not struck on the head by Robinson Jr. at that time or at any time; that Mrs. Stoll was not threatened but walked to the automobile, got in, was not bound, and that she got on the front seat and they proceeded to drive to the Municipal Bridge.

It has further been claimed and testified to by a taxicab driver that on October 10, 1936, at some hour in the afternoon he had a minor brush with his car and recognized the defendant Thomas Robinson Jr.; that he did not report his recognition to any federal, state or police officer; that two years later by pictures in the paper he recognized Mrs. Stoll as being in that car; and that the only person he told was his wife.

It further developed that the witness in question did not marry until the year 1941, and that he had told no one of this occurrence with the exception of his wife until he went to the office of Mr. Hogan the defense counsel in this case.

It is further claimed by the defendant Robinson Jr. that as a result of an agreement with Mrs. Stoll she went

Testimony of Dr. Wm. E. Gardner

to the apartment at Indianapolis, and there remained without any duress or force or threats of any kind for a period of four days; that during the last two days they
 1884 had a falling out and he was compelled to hold her there.

He makes no claim of any acts of intercourse were indulged in in the apartment at any time.

He further said that in pursuance to this agreement, a division was made of the ransom money with \$25,000 to Robinson Jr. and that at the time he left the apartment he left \$25,000 on the divan.

Now I call your attention to certain government exhibits, the ransom note being Government Exhibit No. 33; the letter to the custodian being Government Exhibit No. 48; the letter to W. A. Smith, Government Exhibit No. 51; the letter to Warden Bates, Government Exhibit No. 78; the letter to his father being Government Exhibit No. 80; the letter to his father being addressed to the intermediary and signed "The Kidnapper."

All right.

Mr. Brown: Now if Dr. Gardner will remain and the other three gentlemen will withdraw, I will proceed to ask Dr. Gardner.

The Court: You other three gentlemen retire from the court room and you will be called later.

1885 The Court: Now, as I stated to the jury when

Mr. Hogan presented his hypothetical case to the medical witnesses, I make the same statement to the jury at this time, that questions of facts assumed by the attorney for the Government are assumed for the purpose of the question. Some of those facts may be in dispute, but what are the real facts in this case is for the jury to decide when it reaches its verdict. For the purpose of this case, such facts are assumed by the witness to be correct.

DR. WM. E. GARDNER, resumed the witness-stand and was examined and testified as follows:

Direct Examination Continued by Mr. Brown.

Q. I will ask you, Dr. Gardner, whether in your opinion the man I described to you suffered such a perverted

Testimony of Dr. Wm. E. Gardner

and deranged condition of the mental faculties as to render him incapable of distinguishing between right and wrong.

A. It is my opinion that he did not and does not.

Q. Was the person incapable of distinguishing between right and wrong or unconscious at the time of the nature of the act he was committing?

A. It is my opinion that he was not.

Q. Was he able to distinguish between right
1886 and wrong and appreciate fully the legal consequences of his act?

A. It is my opinion that he was.

Q. Dr. Gardner, have you examined this defendant, Thomas H. Robinson, Jr.?

A. I have.

Q. When did you examine him, Doctor?

A. I examined him in company with three other physicians, Doctors Ackerly, Kimbell and Landis, at the Jefferson County Jail on October 11th, 1943.

Q. At that time, Doctor, were you appointed by the Court to examine this man and make a report to the Court?

A. I was.

Q. Would you tell the jury what your examination consisted of, and if you have a report read your report to the jury?

A. This examination was made by the four of us and the report is addressed to the Honorable Shackelford Miller, Jr., United States District Judge, Federal Building, Louisville, Kentucky, in regard to Thomas Henry Robinson, Jr.:

"Dear Sir:

We, the undersigned psychiatrists, on October 11th, 1943, have completed the examination of Thomas
1887 Henry Robinson, Jr. in accordance with your request. Our examination of this defendant consisted of, first, a physical examination, second, a neurological examination, third a mental examination. The physical examination was necessary in order that we might determine whether this man suffers from any physical illness which might in any way interfere with or in-

Testimony of Dr. Wm. E. Gardner

fluence his power of reasoning or his will power, or serve as a causative factor in the production of any form of mental disorder. We find the defendant to be in good physical condition and that he does not suffer from any acute or chronic illness which might interfere with the normal function of his mind.

A neurological examination was necessary in this, as in any other neuropsychiatric examination, to determine the presence or absence of any disease or condition of the peripheral nerves, cranial nerves, or any part of the central nervous system, including the brain, which might in any way interfere with the normal functioning of the mind or become a causative factor in the production of mental disease. We find no evidence of disease or impairment of the functions of the peripheral nerves, the cranial nerves, or of the central nervous system, including the brain.

1888 The mental examination: The defendant came quietly and willingly into the examining room and cooperated in the physical, neurological and mental examination. His speech was free, relevant and coherent. Orientation correct in all spheres, and he was in normal contact with his surroundings. No delusions, illusions or hallucinations were elicited. He showed normal insight, his judgment is not impaired, he shows appropriate emotional responses, and he does not show evidences of mental or emotional deterioration.

The diagnosis in this case is without psychosis. This term is used by psychiatrists to signify that an individual is not insane and that he does not suffer from any form of mental disorder which would render him incompetent and irresponsible.

Respectfully submitted,

Spafford Ackerly, M. D.
Edward E. Landis, M. D.
Isam Kimbell, M. D.
Wm. E. Gardner, M. D."

Testimony of Dr. Wm. E. Gardner

Q. Dr. Gardner, tell the jury whether in your opinion, as of October 10th, 1934, this defendant knew the difference between right and wrong.

A. It is my opinion that he did.

Q. Further, tell the jury whether in your opinion as of October 10th, 1934, this defendant fully appreciated the consequences of any criminal act.

A. It is my opinion that he did.

1889 Q. From your answer, from your consideration of the various exhibits and the facts which have been presented to you in the hypothetical question, have you or do you classify this defendant in any way?

A. I am unable to classify him as belonging to the category of any mental disorder.

Q. From your examination of the records and the statement and the assumption of the facts that I have given you, is there any statement you would like to give to the jury as to what category this defendant falls, if any?

A. Well, after considerable study of the records in this case which we have had before us for sometime, parts at times which have been supplemented by other reports, it is my opinion that the individual does not suffer from any recognizable mental disorder, but I do believe that he might be referred to as an anti-social person with criminal traits and character deficiencies.

Mr. Brown: You may ask the witness.

Cross-examination by Mr. Hogan.

Q. Was he on the date of your examination - and what was that, Doctor?

A. That was October 11th, 1943.

Q. (Continuing) - a constitutional psychopath?

1890 A. I am unable to classify him as such. It is my opinion that he doesn't fall, certainly typically, within that classification.

Q. You are reasonably sure that he is not in that classification, or was not on the date of your examination.

A. Well, now when we mention the term of constitutional psychopath or psychopathic personality or constitutional psychopathic inferiority, all of which are supposed

Testimony of Dr. Wm. E. Gardner

to be more or less synonymous and are used—these designations are used rather extensively in prisons and state hospitals sometimes admit a relatively small percentage of cases under that designation, and yet it is a very broad, elastic sort of term. It is not well defined. People who suffer from various anti-social acts, who are unable to adapt themselves efficiently to their environment and meet the ordinary demands of society, sometimes get into difficulties, and they may be either committed to a state hospital or sometimes to a prison, and there is always an effort on the part of the staffs of these institutions to at least make some type of diagnosis, and if there is absence of frank mental disorder and confusion as into what category the patient or the individual might be placed, a patient in the state hospital or the individual in the prison, the tendency has been to classify these individuals as psychopathic personality. Now I'll say that there is a good

1891 deal in the history of this case which might have indicated that he had some of the characteristics of such an individual who is primarily an anti-social person with character deficiencies, who is unable to meet the ordinary demands of society and who comes frequently in conflict with the law. There are certain things in the case that indicated he might have some of the characteristics of a psychopathic, and my opinion is not rigid upon that point, although I am in doubt as to whether he falls typically within that classification.

Q. You think that might be a mistake when he was so classified?

A. Well, I would defer to the judgment somewhat of physicians who had him under observation in prisons, and inasmuch as they are in the habit of classifying a pretty large percentage of their inmates as psychopathic personalities I couldn't disregard entirely their opinions regarding the matter.

Q. So you are willing to accept the opinion of those in insane institutions that had him under observation.

A. No.

Q. You are not willing to do that.

A. No, not in his case, no, not in insane institutions.

Testimony of Dr. Wm. E. Gardner

I said I would defer to the opinion of the physicians in prisons who had classified him as a psychopathic personality. In one institution, perhaps, he was classified as that. I would not disagree with that diagnosis wholly. I would disagree with another diagnosis which was made in one institution.

Q. You are just picking your choice, in other words.

A. Well, I have a right to express an opinion, I understand.

Q. Will you let me have your statement, Doctor?

(Report handed counsel by the witness.)

Q. This is dated October 11th, 1943, is it not?

A. Yes, sir.

Q. I am going to take your statement, and when I mean your statement I mean the joint statement.

A. Do you have another copy of that, Mr. Brown?

Mr. Brown: We will have to get you another copy.

The Court: I have a copy.

(Copy handed the witness by the Court.)

The Witness: I would like to follow it with Mr. Hogan.

Mr. Hogan (To the reporter): Now, will you read me his answer to the—the Doctor's opinion back there as to what type of individual he considered this defendant to be.

The Court: He said—anti-social person with criminal traits and character deficiencies.

Q. (Reading) "We find the defendant to be in good physical condition and that he does not suffer from any acute or chronic illness which might interfere with the normal function of his mind." Is there anything in that statement which would make him what you term him to be?

A. An anti-social person—nothing in that, no.

Q. (Continuing reading) A neurological examination is necessary in this as in any other neuropsychiatric examination, to determine the presence or absence of any disease or condition of the peripheral nerves, cranial nerves, or any part of the central nervous system, including the brain, which might in any way interfere with the normal functioning of the mind or become a causative factor in the production of mental disease." Anything in that state-

Testimony of Dr. Wm. E. Gardner

ment that creates the type that you mention?

A. No, sir.

Q. (Continuing reading) "We find no evidence of disease or impairment of the functions of the peripheral nerves, the cranial nerves, or of the central nervous system, including the brain." Anything in that statement that constitutes him what you said he was?

A. No, sir.

Q. (Continuing reading) "Mental examination:
1894 The defendant came quietly and willingly into the examining room and cooperated in the physical, neurological and mental examination. His speech was free, relevant and coherent. Orientation correct in all spheres, and he was in normal contact with his surroundings. No delusions, illusions or hallucinations were elicited. He shows normal insight, his judgment is not impaired, he shows appropriate emotional responses, and he does not show evidence of mental or emotional deterioration." Anything in that statement that constitutes him what you said he was?

A. There is not.

Q. (Continuing reading) "The diagnosis in this case is without psychosis. This term is used by psychiatrists to signify that an individual is not insane and that he does not suffer from any form of mental disorder which would render him incompetent and irresponsible." Anything in that statement that constitutes him what you said he is?

A. There is not, and my statement was not based upon this examination when it was made. It was based upon the hypothetical question with all it contained.

Q. Now, you made an examination in the jail.

A. I did.

Q. And who else was present beside you, Doctor?

A. You were there, and by the way, we had met
1895 Mr. Robinson the day before. We went down on Sunday afternoon, hoping that we might see him then. He came in and was courteous, and we talked to him informally, and he said that—told us that he was sorry, but that you had requested that you would like to be present when the examination was made. We tried to get hold

Testimony of Dr. Wm. E. Gardner

of you, telephoned your home and other places. I suppose it was hardly to be expected that we might find you on Sunday afternoon, and we sat around, and then we went back on Monday afternoon. At that time you were present with the other physicians, and I believe the marshal of this court was present.

Q. Now Doctor Gardner, your primary mission to examine—your own mission, so far as the court is concerned, was to determine Thomas Henry Robinson, Junior's then sanity or insanity.

A. That's right.

Q. And you fulfilled your mission by making this report to the court under date of October 11th, 1943.

A. That is correct.

Q. Having fulfilled your mission and having determined that he was then presently sane, you had no further interest so far as the court's appointment is concerned, did you?

A. That is correct.

Q. Now, on that occasion, you four doctors made
1896 a diligent effort to go behind October 11th, or the day that you examined him, to find out about his past, did you not?

A. We made some effort but it was objected to by you, to which we tried to adapt ourselves.

Q. So you had the man there just as he stood.

A. Yes.

Q. And you had to determine whether he was sane or not sane on that occasion.

A. Yes.

Q. Just as you saw the individual.

A. Yes, but we had had submitted to us some history of his case previously, and we wanted to confirm some of that by him if possible.

Q. And I wouldn't even let him tell what he had had for breakfast the day before, would I?

A. Almost the equivalent of that.

Q. Because you were not to determine what his sanity was the day before, it was that day.

A. Yes. We felt at the time we should have been per-

Testimony of Dr. Wm. E. Gardner

mitted a little more latitude. We certainly would have been pleased if we had had a little more latitude in our examination, but we adapted ourselves to your request.

Q. The court asked you to do a specific job, and that was to find out what he was, with reference to
1897 whether he was sane or insane on that particular occasion.

A. That's right.

Q. Now, when were you employed by the Government or consulted, I should say, to testify in this case?

A. Well, we were subpoenaed within a relatively short time thereafter. I don't have a copy of the subpoena with me, but we were subpoenaed by the United States Government to be available as witnesses, and then sometime after that, of course, we came down and began going over material, photostatic copies of various examinations that had been made by the doctors and other people, in conference with Mr. Brown from time to time. I didn't make a memorandum of those dates, but we have had some two or three conferences with him.

Q. Dr. Gardner, do these psychopathic personalities ever recover, ever cured?

A. A true psychopathic personality does not recover. It is a life-long sort of situation. They usually show some tendencies relatively young and they drift about from pillar to post, have various difficulties, and go along and may get into, as I say, either a state hospital, very few get into state hospitals, the majority into prisons. They may remain a number of years and adapt themselves pretty well to the routine under supervision and control, but they do not recover. Then, that type of personality, that
1898 character deficiency, they lack feelings of duty and obligation, and honest, and decency, and consideration of others, which is a part of their personality make-up and they don't change materially.

Q. Then as you saw this individual on October 11th, 1943, he was certainly not in any wise a psychopathic personality, was he?

A. We didn't make any effort to make a diagnosis of psychopathic personality. Our reaction to this individual

Testimony of Dr. Wm. E. Gardner

is being as an anti-social person—on the history.

Q. Not on the history, now, but just what you visualized. After diagnosing him as an expert on October 11th, did you come to the conclusion then that on that day he was a psychopathic personality?

A. No, I did not, and I'll say that I am not sure at any time that I have come to that conclusion. As I say a moment ago, I expressed a doubt as to whether or not he is a true psychopathic personality, but we didn't come to that conclusion then.

Q. What you saw then was a cured man or as sane a man as you might expect to find.

A. I didn't say a cured man. He seemed to be a normal individual.

Q. And if he had ever been a truly psychopathic personality, he would not have been normal on October 1899 11th, would he?

A. We could not have made that diagnosis from the type of examination to which we were restricted by you. We could not make a diagnosis of psychopathic personality. We made a diagnosis that he was not insane, he had no psychosis, but we couldn't make a diagnosis of his life-long history because we were not permitted to go into that.

Q. You didn't see anything that gave you the impression that he was—

A. You don't see things in a psychopathic personality.

Q. You didn't find anything.

A. You don't see anything on the surface. It is the behavior of the individual over a period of time that makes the diagnosis.

Q. What was his behavior on the 11th?

A. I mean over a period of time. His behavior was normal on that day.

Q. That would tend to disprove any misbehavior.

A. Not at all. Not at all. Not of a psychopathic personality or an anti-social individual, because he adapted himself very well, not only before us, but the record shows in prisons and other places where he had been.

Q. Well, on October 11th he appeared normal.

Testimony of Dr. Wm. E. Gardner

A. Yes.

1900

Mr. Hogan: That's all.

Mr. Brown: That's all, Doctor.

DR. ISHAM KIMBELL resumed the witness-stand, and was examined and testified as follows:

Direct Examination Continued by Mr. Brown.

Q. In your opinion, Doctor, on October 10th, 1934, was the defendant Robinson suffering from such a perverted and deranged condition of his mental faculties as to render him incapable of distinguishing between right and wrong?

A. He was not.

Q. In your opinion, as of October 10th, 1934, did the defendant Robinson fully appreciate the legal consequences of any criminal act?

A. He did.

Q. Was his mind or the governing forces of his will, otherwise than voluntarily so destroyed that his actions were not subject to it and were beyond his control?

A. They were not.

Mr. Brown: You may ask the witness.

Cross-examination by Mr. Hogan.

Q. Dr. Kimbell, what do you understand the
1901 psychopathic personality to be?

A. Well, the psychopathic personality is an anti-social person with criminal traits and character deficiencies.

Q. Isn't that an unscientific designation?

A. Well, the term psychopathic personality is also a very unscientific definition.

Q. That's what I am referring to, the term itself is unscientific.

A. Yes, sir.

Q. It is when you are at a loss to understand in just what type to place a man that you place him under that

Testimony of Dr. Isham Kimbell

term or definition.

A. No, I wouldn't say that. I wouldn't say that when I didn't know how to make—you refer to a diagnosis, do you?

Q. No, I mean after you have made your diagnosis and are at a loss to understand how to type him, you throw him in as a psychopathic personality.

A. No, I don't think so. Psychopathic personality has been referred to as very unsatisfactory terminology. I wouldn't say that every man that you didn't know how to type him should be placed in that category.

Q. What do you understand the subjective mind to be, medically?

1902 A. What do I what?

Q. The term subjective mind, is that the formulative mind, the mind that formulates the ideas?

A. Well, if there is subjective evidence to show that a man is suffering from a delusion or hallucination, the mind would be called into play to determine that.

Q. I don't believe you understand my question, Doctor. Aren't there two types of mind, the subjective mind and the objective mind?

A. Well, I haven't heard it placed that way. Some schools of thought speak of the conscious and the unconscious mind.

Q. Now with reference to the subjective, is that synonymous with conscious mind?

A. I should think so.

Q. Then the converse of that situation would be true, that the objective and the unconscious would be synonymous.

A. Well, the conscious and the unconscious mind goes rather deeply into a field known as psychoanalytical thought, and when you speak of the unconscious, that is a portion wherein complexes are supposed to be buried because they are not painful to the conscious mind, and when these complexes are brought about, the effort to bring them from the unconscious to the conscious, that brings
1903 about a conflict and produces these delusions and hallucinations, and other evidences of mental dis-

Testimony of Dr. Isham Kimbell

order. That is a theory. Some do not agree with that.

Q. In other words, it is what we sometimes call lack of coordination.

A. Yes.

Q. Out of gear, out of harmony with one another—is that right?

A. That's right.

Q. Now, when do you understand or believe medically and expertly this inception of a psychopathic personality to manifest itself?

A. Well, I believe that I would have to know the particular case that you have reference to.

Q. Well, is it hereditary?

A. I wouldn't say that it is hereditary.

Q. I didn't understand you.

A. I wouldn't say that it is hereditary. I would say it is a character deficiency.

Q. Well, it is a deficiency that's born with the individuals.

A. Oh, yes, it is a deficiency that is very applicable to a very large class of individuals.

Q. And that comes rather early in life?

A. Well, it might not. Psychopathic traits
1904 might come at any time.

Q. Well, these young boys that jump on the street car and pull the trolley off, steal small amounts, petty thievery, that's when the psychopathic personality commences to manifest itself, is it not?

A. Well, that might be. It would depend—you see a great many boys who as they grow up have overcome that thing. A lot of that is in the spirit of fun, merely the exuberance of youth, except petty thievery.

Q. Laying aside the natural normal boy's tendencies to give vent to his feelings, I mean the petty thievery, that's the commencement of the psychopathic personality—that or some other trivial or petty derangement, is it not?

A. It might be.

Q. And then the petty thievery—he takes one step further and he will get a little bolder, do something else on

Testimony of Dr. Isham Kimbell

a little larger scale a little more out of line with normalcy.

A. I didn't understand your question.

(Question read by the reporter.)

A. It is possible that might be true in some instances. It might be true not only of the psychopath, but it is frequently true of the feeble minded individual, the feeble minded boy or the feeble minded girl, and they are not psychopaths.

Q. They are born that way—feeble minded persons.

1905 A. Were you asking me?

Q. Yes, sir.

A. Well, that's right.

Q. Does the psychopathic personality recover, Doctor?

A. Well, psychopathic personality would not recover any more so than any other type of personality. Personality is peculiar to the particular individual and it will continue with him throughout life.

Q. Never an instance of the psychopathic personality being cured.

A. The entire structure of man's personality being changed, that would be necessary. I don't think it would.

Q. When did you examine Thomas Robinson, Jr., Doctor?

A. It was October 11th, I think.

Q. Did you find him in a normal condition?

A. I found him sane.

Q. Did you find him normal?

A. Well, I found nothing abnormal about him to indicate that he was suffering from a mental disorder.

Q. Did you then find him a psychopathic personality?

A. Well, I concluded from my observation and
1906 examination of him, study of such data that was available to me, that he was—

Q. No, now—

A. (Continuing) —that he is—

Q. Now wait a minute, Doctor, I asked you if on October 11th you found him to be a psychopathic personality.

A. Well, as I started to say, I found him on that particular date to be an anti-social person.

Testimony of Dr. Isham Kimbell

Q. You did?

A. Yes, with a character deficiency and criminal tendencies.

Q. I would like for you—is this a copy of your report?

A. That's right, sir.

Q. Will you read that and find that term described in there?

A. You mean the last paragraph? "This diagnosis in this case is without psychosis. The term is used by psychiatrists to signify that an individual is not insane, that he does not suffer from any form of mental disorder which would render him incompetent and irresponsible." That's right.

Q. Now, you find in there, if you can, where you reported to this court that he was an anti-social person with criminal tendencies.

1907 A. I didn't report that. You asked me what I found personally. That's the report of the board.

Q. Are you a part of this report?

A. That's right.

Q. Do you have a dissenting opinion from that?

A. I do not.

Q. You made that report to the court, did you not?

A. That's right.

Q. You mean you held out on the court certain information?

A. No. He is without psychosis.

Mr. Hogan: That's all, Doctor.

Mr. Brown: That's all.

DR. EDWARD E. LANDIS resumed the witness-stand, and was examined and testified as follows:

Direct Examination by Mr. Brown (Continued).

Q. What is your profession?

A. I am Assistant Professor of Psychiatry at the University of Louisville, Medical School.

Q. Doctor, having in mind the hypothetical question

Testimony of Dr. Edward E. Landis

I asked you, tell the jury whether in your opinion, as of October 10th, 1934, this defendant was suffering
 1908 from such a perverted and deranged condition of the mental faculties as to render him incapable of distinguishing between right and wrong.

A. In my opinion, in view of those facts, he was not.

Q. I ask you further, whether in your opinion this defendant fully appreciated the legal consequences of any deliberate act.

A. Yes, sir.

Mr. Brown: You may ask the witness.

Cross-examination by Mr. Hogan.

Q. Have you ever typed this individual, Doctor?

A. Beg your pardon?

Q. Have you ever determined in your own mind what type of individual he is?

A. No, sir, I arrived at no specific type.

Q. I believe you made an examination along with the other three doctors on October 11th, 1943?

A. Yes, sir.

Q. What kind of an individual did you find then, with reference to whether he was normal or abnormal?

A. I didn't use the terms normal or abnormal. I have that report with me if you would like it.

1909 Q. Was he normal?

A. I didn't say that he was normal. I said he was without psychosis; in other words, not insane.

Q. Did you write this report?

A. I concurred in the report.

Q. Who dictated it?

A. Four of us together dictated the report because the four of us examined him together.

Q. Did you report—is this your report, “He shows normal insight, his judgment is not impaired, he shows appropriate emotional responses, and he does not show evidences of mental or emotional deterioration.”

A. Yes, sir.

Q. Doesn't that almost make one a normal person?

A. It is hard to define a normal person.

Testimony of Dr. Edward E. Landis

Q. Are there normal persons?

A. I don't know what a normal person is.

Q. Are we all crazy?

A. No, sir, I hope not.

Q. Don't you think so sometimes after seeing a lot of crazy persons?

A. I don't believe that's pertinent here.

Q. Doctor, what is a delusion, as you understand it?

A. Delusion—you mean the definition of a delusion?

1910 Q. Yes, your own words to describe a delusion.

A. It is a false belief.

Q. An idea based upon false premises, is that a good definition?

A. Well, my definition is that it is a false belief.

Q. An idea in the mind that—or false belief of some fact that is non-existent.

A. I prefer to stay with the simple definition, false belief.

Q. All right. You don't want to go very far from base, do you?

A. No, sir, because one could get far afield.

Q. Have you ever had any dealings with individuals who believe that they were the reincarnated personage of another person?

A. Not with that alone.

Q. Well, with other conditions?

A. I have seen persons with very bizarre, unusual ideas of that sort in connection with a very full picture of various other things too in their make-up.

Q. These bizarre types associated with other things in their make-up, do they constitute a paranoid personality?

A. Not that in itself.

Q. No, I said associated with other ideas and
1911 things about their make-up.

A. Do you want me to elucidate on these other things?

Q. Yes.

A. Well, in the type of individual who is shy and in-

Testimony of Dr. Edward E. Landis

troverted, the so-called shut-in type of individual, the so-called wall flower type who doesn't like to mix with people, doesn't like to be with people, who is inclined to have weak sexual drives and inclined to show very little interest in the opposite sex, in combination with some of these make-ups and carrying out in living these false beliefs, sometimes it does mean something.

Q. What does it mean?

A. It sometimes is associated with more profound difficulties, but only in keeping with all the rest of the picture.

Q. Then, keeping it within the picture, as you say, what do you call that type of person? What medical expression do you apply to that?

A. I don't apply it to any general type, I only apply to an individual case where I have had a chance to study the entire facts of that case of that individual. I never apply it in general.

Q. What is a dementia praecox person?

A. Dementia praecox is a term that is applied
1912 to a mental illness which in my opinion has associated with a personality disorganization. It tends to occur in certain types of persons in certain make-up.

Q. What are some of the first symptoms of a dementia case?

A. Of a dementia praecox?

Q. Yes.

A. Well, it depends. It is hard for me—

Q. Let me ask you if morosity is a form—

A. Beg your pardon.

Q. Is morosity simply being morose?

A. Not necessarily. That in itself would not be a form of dementia praecox.

Q. Let's take this type of individual, one who has been very pleasing and has had a host of friends, and there is something in that person's life that shocks him or finally changes his insight into his social life, and then that person becomes the opposite of pleasantry, he gets to himself, hangs to himself, would you say that change in personality from one stroke to the other or opposite would

Testimony of Dr. Edward E. Landis

denote a form of dementia praecox?

A. That type of personality change doesn't happen, in my opinion.

Q. You never came in contact with that type.

A. No, sir. The person who makes friends, who
1913 is sociable and what not, does not develop dementia praecox.

Q. Is that your opinion, Doctor?

A. That's my opinion.

Q. What types do develop dementia praecox?

A. As I said, the person who is shy and timid, the shut-in type of person, the so-called introvert, with weak sexual drives, who doesn't like to be with other people, that type of person doesn't always develop, but if they develop a mental illness they are more apt to develop dementia praecox.

Q. When does dementia praecox usually strike an individual? When does it happen in his life?

A. It is a very insidious thing. It doesn't come on at any particular time. It isn't a sudden illness. It is in the process of occurring over a long period of time.

Q. Does it occur at the age or about the age of puberty?

A. Not dramatically so. At the age of puberty there are in most youngsters more emotional upheavals than earlier than that age, and therefore such symptoms are apt to be brought out at that particular age.

Q. They are more susceptible to changing their personality about that time?

A. I don't believe they change their personality.
1914 I think once a personality make-up is there it remains there, but they may develop an acute illness on top of that particular personality make-up.

Q. Following your theory then, if they have it say dormant in their system, and then something at the age of puberty or about that time strikes them and brings it to the front, then would you say there would be a change in personality?

A. No, sir. It is just an accentuation of the personality make-up, it becomes more pronounced during that illness.

Testimony of Dr. Edward E. Landis

Q. You can notice it more than you could ordinarily.

A. They tend to show symptoms, acute symptoms, at that time.

Q. What are those symptoms? Give us some of those.

A. You mean in what type of thing?

Q. Dementia praecox.

A. Acute dementia praecox, what type?

Q. Paranoid.

A. Paranoid type? The dementia praecox with acute paranoid reaction is highly upset, they tend to carry out and really act on the delusions from which they suffer,

they put into action the ideas that they are some-
1915 one, they live them out, these ideas, in their life pattern in such a way that it can be observed objectively by persons trained to recognize those symptoms.

Q. You don't have any trouble then, detecting that type of person.

A. Not at all, not in the acute illness.

Q. Do those types that you just mentioned go into rages sometimes?

A. That to me is not a characteristic symptom, no.

Q. You mentioned a term there, they get infuriated. Did you distinguish between rages and infuriation?

Mr. Brown: I didn't understand him to say that.

Mr. Hogan: Maybe I missed the term.

Q. What was your term there. I understood something about excitement.

A. They get upset, emotionally upset.

Q. And when they get emotionally upset, what do they do?

A. They are very anxious, they are panicky, afraid, and tend to be physically aggressive.

Q. What do you mean by that?

A. Well, if one, for instance, in the paranoid
1916 dementia praecox—one of the symptoms they are apt to show in an advanced stage is that—take, for example of someone saying something about them, ideas that people are talking about them, they not only have the idea, they go and act on that idea to check on it and see if they were talking about them, they stop the man whose

Testimony of Dr. Edward E. Landis

talking about them and say "What did you say about me?" or they may attack him. It is carried out in action.

Q. In other words, the paranoid type is an active bird, he goes into action.

A. Yes, sir.

Q. He gets an idea, you can't stop him.

A. In the acute paranoid state.

Q. You can't stop him, he has got to go, is that right?

A. In the acute paranoid state; yes, sir.

Q. I mean, if he gets an idea, he has got to satisfy that idea.

A. I am talking about the people talking about him.

Q. Let's see about some other actions now. Suppose he gets some other idea, not ideas of reference, but ideas, say, of persecution.

A. What do you mean by persecution?

Q. Well, somebody is doing him wrong. What does he do in that case?

1917 A. Someone has done him wrong?

Q. Yes.

A. And still in the acute paranoid state?

Q. Yes.

A. I don't see that that is much different than the idea that they are doing him wrong by talking about him.

Q. In other words, he does something—

A. He is apt to do something about that particular thing.

Mr. Hogan: Thank you, Doctor.

Mr. Brown: That's all.

The Court: Do you want to go on with the other witness?

Mr. Brown: Yes, I prefer to.

The Court: I think possibly the jury had better take a short recess.

Members of the jury, do not discuss the matter among yourselves or talk to anyone about it.

We will take a short recess.

A short recess was taken, after which the following proceedings were had:

Mr. Brown: Your Honor, there was a part of a defini-

Testimony of Dr. W. E. Gardner

1918 tion I overlooked asking Dr. Gardner and Dr. Kimbell. If they could just step forward, I think Mr. Hogan has no objection, I will ask them the rest of the definition.

Mr. Hogan: That's all right.

The Court: Is Dr. Gardner here?

DR. W. E. GARDNER, was recalled and examined by Mr. Brown, as follows:

Q. Dr. Gardner, as of October 10th, 1934, having in mind the hypothetical question I asked you, in your opinion was that man's will, by which I mean the governing power of his mind, otherwise than voluntarily so completely destroyed that his actions were not subject to it and beyond his control?

A. It was not.

The Court: You want to ask him anything?

Mr. Hogan: No.

DR. ISHAM KIMBELL, was recalled and examined by Mr. Brown, as follows:

Q. Dr. Kimbell, in your opinion as of October 10th, 1934—

The Court: I think Dr. Kimbell testified to that. Dr. Landis did not.

Mr. Brown: I couldn't remember whether it
1919 was Dr. Kimbell or Dr. Landis. All right, Dr. Landis.

The Court: At least, I have a notation here as to that.

Mr. Brown: I had forgotten. I will rely on your notations.

DR. EDWARD E. LANDIS, was recalled and examined by Mr. Brown, as follows:

Q. Dr. Landis, in your opinion as of October 10th, 1934, was his will, by which I mean the governing power of his mind, otherwise than voluntarily so overthrown



Testimony of Dr. Edward E. Landis

and destroyed that his actions were not subject to it and beyond his control?

A. No, sir.

1920 DR. SPAFFORD ACKERLY, resumed the witness-stand, and was examined and testified as follows:

Direct Examination Continued by Mr. Brown.

Q. Doctor, in your opinion, as of October 10th, 1934, was the individual mentioned in the hypothetical question, capable of distinguishing between right and wrong.

A. Yes, sir.

Q. Did he realize the legal consequences of his own deliberate acts?

A. Yes, he did.

Q. Was his will, by which I mean the governing power of his mind, otherwise than voluntarily so completely destroyed and overthrown that his actions were not subject to it and beyond his control?

A. Not in my opinion.

Q. Now, Dr. Ackerly, having in mind the hypothetical question I asked you and the facts therein, was the person that was described of the type that develops dementia praecox?

A. No, sir. I would say that he was just the opposite type.

Q. Explain that in detail, Doctor, in your opinion what type develops dementia praecox, and in your opinion what type does not develop dementia praecox.

1921 A. The type that is likely to develop dementia praecox is the individual who is timid, shy, seclusive, withdrawn within himself, and yet he is conscientious and scrupulous, and law abiding. However, he finds it very difficult to influence other people or to arouse their sympathies and their feelings. He wants to, but he can't do it. He doesn't seem to be able to attract the opposite sex. He may wish that he had that ability to do it, but he doesn't seem to have the ability to attract the opposite sex.

Testimony of Dr. Spafford Ackerly

He may show a desire to be in the company of other people, of the opposite sex, but in reality that type of person has very weak sexual drives. Now that in general is the type of a person who, if he went insane, would develop dementia praecox.

Q. Doctor, assuming that a person at one time had dementia praecox of the paranoid type and was restored to sanity, would that person still show any signs of his previous mental disease?

A. No, not necessarily. The symptoms of the mental disease might clear up, but he would still be that sort of a person underneath that one could very readily, at least a psychiatrist could see that that was the type of person who could very well have had those symptoms
1922 of that type in his examination at any particular time.

Mr. Brown: You may ask the witness.

Cross-examination by Mr. Hogan.

Q. What are these paranoid types of dementia praecox, Doctor?

A. You ask me, what are they?

Q. Yes, what are the symptoms of those types? How do you detect them?

A. Well, in the first place, the type of person who would develop dementia praecox of the paranoid type or any type of dementia praecox, would be the type of person I have described. They have the symptoms either of persecution or delusions of grandeur, not just because the person said he had those ideas, but because one objectively can see him reacting to those ideas day in and day out.

Q. In other words, he not only has the ideas, but he carries them into action.

A. He can carry them into—I would say that he does not carry them into action. He reacts to the ideas in an insane way.

Q. Meaning what, Doctor?

A. That his reactions do not click with reality, do not click with the facts and are not logical.

1923 Q. What he does, the things he does, are illogical.

Testimony of Dr. Spafford Ackerly

in other words.

A. Illogical to the situation.

Q. Have no foundation in truth, in other words.

A. Any true fact.

Q. Believing in something that really does not exist.

A. They exist in the situation.

Q. They exist in that person's mind.

A. Yes.

Mr. Hogan: That's all, Doctor.

Redirect Examination by Mr. Brown.

Q. Now Doctor, from your listening to the hypothetical question, for the benefit of the jury, in your opinion did that describe any sort of a person, and if it did, what sort of a person in your opinion was it as developed in the hypothetical question.

A. The sort of a person that you developed in the hypothetical question, and I assume that those facts are true, as I said in the beginning, is an opposite sort of a person who develops dementia praecox, namely, one who is essentially an anti-social person without mental disease, without dementia praecox, with criminal tendencies
1924 and character deficiencies.

Q. Doctor, assuming from my hypothetical question, that the first signs developed at the age of nineteen to twenty-one, would you say that that would change your opinion?

A. Not in the least.

Q. Why not?

A. I would change my opinion—

Q. (Interrupting) If he was an anti-social person.

A. If he was this sort of person I have mentioned. Of course, one can assume that this sort of a character has been there and has not come out until that time.

Q. Why has he come out, based on the hypothetical question that I gave you?

A. It seems, if I remember it correctly, in the facts you brought out in the early history, that the young man probably got pretty much what he wanted until those years and had no need for anti-social behavior, if that is

Testimony of Dr. Spafford Ackerly

what you are asking.

Mr. Brown: All right, Doctor, thank you very much. That's all.

Recross-examination by Mr. Hogan.

Q. Did you agree with these other three doctors
1925 in your report to the court of October 11th, Dr. Ackerly?

A. Yes, I did.

Q. Did you find on that date the type of person that you have just described?

A. No, sir, either that person or the other person.

Q. You found a normal person, did you not?

A. No. The report, as I remember, said I found a person without psychosis, meaning without insanity.

Q. You didn't find a person with criminal tendencies on that date?

A. I wasn't looking for that.

Q. You didn't find any, either.

A. I couldn't find it. I wasn't looking for it.

Q. You didn't report it to the court.

A. I am a psychiatrist and I am looking for mental disease and not for criminal traits.

Q. Then would you say, in answer to Mr. Brown's question, that you were looking for criminal traits?

A. I had to when I read the history and heard the hypothetical question.

Q. You found nothing on October 11th that denoted any criminal trait?

A. Not in the slightest. Mr. Robinson was a gentleman throughout the whole examination.

Mr. Hogan: All right, Doctor. Thank you.

Mr. Brown: That's all.

1926 Mr. Brown: Your Honor, I exhibited to the jury these pictures this afternoon, and I was under the impression I had introduced them as a Government exhibit. The one keeping the Government exhibits tells me I didn't, and I would like to introduce them as Government Exhibit 88a, b and c.

Testimony of Dr. Thos. J. Crice

(The said pictures were handed to the reporter and marked as indicated, and are filed with the record.)

Mr. Brown: That's the Government's case.

Mr. Hogan: If Your Honor please, I want to reserve at this time saying whether or not I have any more testimony to offer in sur-rebuttal until tomorrow morning. I have a matter of grave importance to this case, and I will report it to the court in the morning.

The Court: It is strictly rebuttal?

Mr. Hogan: Oh, yes, it is strictly rebuttal.

Mr. Brown: That makes it ~~right~~ difficult for my witnesses. If he could indicate with any degree of accuracy, whether or not I could let certain of my witnesses go. I won't ask it, let it go.

The Court: All right, members of the jury, we will recess until 9:30 tomorrow morning. It is very possible we may be able to finish up the arguments and the instructions and let the case go to you before tomorrow is over. We hope so.

Do not discuss this matter among yourselves yet, even though the case has been concluded as counsel has said, or with anyone, or permit anyone to talk about it in any way to you. I always add now to my admonition the usual one about watching your diets and the water that you are drinking to see that none of us gets sick for the remaining short time that we will have to consider this case.

Mr. Marshal, adjourn court to 9:30 tomorrow morning.

Court was thereupon adjourned to Saturday morning, December 11, 1943, at 9:30 o'clock a. m.

1928 Court met pursuant to adjournment at 9:30 a. m., Saturday, December 11th, 1943, and the following proceedings were had:

DR. THOS. J. CRICE, was recalled and further examined by Mr. Hogan, and testified as follows:

Q. Dr. Crice, yesterday Mr. Brown, the prosecuting attorney for the Government, asked you whether or not

Testimony of Dr. Thos. J. Crice

you had a letter from Dr. Kennedy, I believe, authorizing you to use some of his material in an article which you proposed to write. Now did you locate that letter?

A. Yes, sir.

Q. Have you it with you?

A. Yes, sir.

Q. Will you please refer to it and read it to the jury?

A. (Reading):

"December 30, 1939

Dr. Thomas J. Crice
865 Starks Building
Louisville, Kentucky

Dear Dr. Crice:

Dr. Hugh Patrick of Chicago, when I sent him reprints of my papers, always thanked me for my 'advertisements.' After all, that is the only way we doctors can push ourselves about, and I am flattered and pleased that you should have thought my article helpful to you, for I suppose it is over cynical that we write just to spread ourselves! We really write

1929 because there is something in us that we want to say. Of course, publish your paper and then we should both, I hope, be very happy, happier anyway in the next year than we have been in the past.

With kindest regards and best wishes for the New Year, I am

Yours truly,

Foster Kennedy
410 E. 57th Street
New York City"

Q. Will you file that as defendant's exhibit No. 20?

A. I do.

(The said letter was handed the reporter, marked as indicated and filed with the record.)

Recross-examination by Mr. Brown.

Q. Now, is that the only letter that you have from Dr. Kennedy?

Testimony of Dr. Thos. J. Crice

A. Yes, sir.

Q. Now, as a matter of fact, you delivered this paper long before that letter was received, did you not?

A. I don't think so.

Q. Well, let's examine it.

A. This is December 30th.

Q. All right, read before the Kentucky State Medical Association at Bowling Green, September 11th to 14th, 1939.

Now what is the date of that letter?

1930 A. Now wait a minute. Now this is September 14th, 1939.

Q. And what is the date of that letter?

A. This is December 30th, 1939.

Mr. Brown: That's all.

Redirect Examination by Mr. Hogan.

Q. He never complained about your article, did he — Dr. Kennedy?

A. No, sir.

Mr. Hogan: That's all. File your letter, Doctor.

The Court: That all you wish with the doctor?

Mr. Brown: Yes, that's all.

Mr. Hogan: That's all.

The Court: All right, you are excused, Doctor.

The Court: Do you want your next witness called in the hall?

Mr. Hogan: Yes, I do. Mr. Carlisle.

The Court: What is his first name?

Mr. Hogan: Ivan Carlisle. Your Honor, I would like the privilege of just a moment. I haven't talked with this witness.

The Court: All right.

1931 IVAN CARLISLE, called as a witness in behalf of defendant, in sur-rebuttal, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Hogan.

Q. What is your name?

A. Ivan Carlisle.

Testimony of Ivan Carlisle

Q. How old are you, Mr. Carlisle?

A. I am forty-one.

Q. Are you married?

A. Yes, sir.

Q. Have any children?

A. One son.

Q. How old is that child?

A. A little past two years old.

Q. Where have you lived most of your forty-one years?

A. Hardin County, around West Point.

Q. Where do you live now?

A. Valley Station.

Q. What is your business?

A. I am in the tourist camp business now.

Q. What is the name of your tourist camp?

A. I carry it by the name of Beech Grove,
1932 brought my original name with me.

Q. You mean you are operating a tourist camp in Jefferson County by that name?

A. Yes, sir.

Q. Whereabouts in Jefferson County?

A. Ten miles South of the City Limits—Valley Station.

Q. At what particular location?

A. Better known as Orell.

Q. How long have you been operating it at Valley Station or Orell?

A. Well, I built the place new after the Government bought my property at West Point. I opened up sometime in 1940, the latter part of 1940.

Q. You have a new place on the left side of Dixie Highway that you built in 1940?

A. That's right.

Q. And did you formerly operate any other tourist camp?

A. Beechwood Inn at West Point.

Q. What side of the road was that on?

A. Well, I'll say—I will have to get my directions right—

Testimony of Ivan Carlisle

Q. Going towards Nashville.

A. It would be on the righthand side of the road.

1933 Q. Was there a grove of trees there?

A. Yes, sir.

The Court: What did you call it?

The Witness: Beechwood Inn.

Q. Was that ever known by the name of Beech Grove?

A. Yes, sir.

Q. That one down beyond West Point, now.

A. Yes, sir.

Q. Now, was that just before you traveled the road and went up Muldraugh Hill?

A. Yes, sir.

Q. How long did you operate that place, Mr. Carlisle?

A. I was up—I am a musician and I was playing in an orchestra in Wisconsin, and I came down there, built that place new and opened up for business October 11th, 1927, opened up for business.

Q. What kind of a business did you operate there?

A. Well, it was a restaurant and dance hall, and a tourist camp.

Q. Did you have any facilities there for accommodating tourists?

A. Not the best facilities, no, sir, I didn't.

Q. Did you have some facilities?

A. Yes, sir.

Q. What were those facilities?

1934 A. Well, I had a garage there, when I first built it I built it only for the garage, but I seen the tourist business was in demand so I built two rooms upstairs over the garage.

Q. Would you rent those out and were they so arranged that you could rent them out?

A. I had two nice rooms out there and I did rent those out to tourists.

Q. Did you keep a register and register tourists?

A. Yes, sir.

Q. Was that a part of your business, to do that?

A. Oh, yes.

Q. Now, do you know a man by the name of Elmer

Testimony of Ivan Carlisle

G. Allen?

A. Yes, sir.

Q. First, I will ask you, how long you operated this Beechwood or Beech Grove tourist camp?

A. Well, I operated that up till sometime in 1939, and I got engaged to a girl in Elizabethtown and she got killed twenty minutes after I was engaged to her and I was pretty well broke up, so I closed my place for approximately a couple or three months in 1939. Well, I broke out on the stage. I was xylophone soloist for the Continental Chautauqua Company.

Q. You said 1939?

1935 A. 1939. Then I later come back and opened the thing.

Mr. Brown: I don't want to object too much, but it ought to be in rebuttal.

The Court: Yes.

Q. Now let's confine our testimony to 1931.

A. All right, sir.

Q. In the summer of 1931, June, July and August, did you have any connection with inn or tourist camp during that period of time?

A. From the best of my recollection I rented that place to Mr. Allen the latter part of May or the first week in June, and he was there, I think, two months, and then my father and I decided to sell the place, then I sold it to Mr. Palmer.

Q. You didn't sell it to Mr. Allen then?

A. No, sir.

Mr. Brown: Mr. Allen didn't testify to that.

Mr. Hogan: Well, I am asking him.

The Court: No, it is not rebuttal of anything.

Q. Were those facilities there when you rented it to Mr. Allen?

A. Yes, sir.

Q. Were those facilities there when Mr. Allen rented it or when you sold it to Mr. Palmer?

1936 Mr. Brown: I am going to object to this. This is not rebuttal of anything. Both Mr. Allen and the Palmers testified to exactly the accommodations that were

Proceedings

there. They testified there was a garage, two rooms over the garage.

The Court: I don't remember about the two rooms over the garage.

Mr. Hogan: Here is what Mr. Allen said, if Your Honor, please:

"Q. During the time, during May, June and July that you were at the Beechwood Inn, were there any tourist camps or cabins of any description on those premises?"

His answer was: "No."

Mr. Brown: Look at page 1819 of the transcript, the one, two, three fourth question and read his answer if you want to know what he testified.

Mr. Hogan: What page?

Mr. Brown: 1819.

Mr. Hogan: That's the page I am reading from.

Mr. Brown: All right. "There was one big building all under one roof, a dance hall and small restaurant in front and a bar, and a small kitchen on one side and on the other side a very small check room. Then at the back, at the North end, in the rear, was a garage, two story, and there were three rooms upstairs, one about 12 x 14, and two very small rooms." Then he went ahead and
1937 told what members of his family slept therein.

The Court: Now if this witness is merely going to confirm that, certainly it is not rebuttal. If there is anything that he wants to differ with from the testimony—

Mr. Hogan: The question is that there were no accommodations at all for tourists on those premises.

The Court: Are those statements in the transcript, Mr. Hogan, that Mr. Brown read?

Mr. Hogan: Well, this statement is in there too, if Your Honor please: "During the time, during May, June and July, that you were at the Beechwood Inn, were there any tourist camp"—camp, now—"or cabins?"

The Court: Well, we have gotten down to a very small issue. He says those rooms are there. Let him say it.

Testimony of Ivan Carlisle

That's about all he can say, isn't it.

Q. Were those accommodations there, Mr. Carlisle?

A. Yes, sir.

Q. Were they there while Mr. Allen was there?

Mr. Brown: Mr. Allen testified to that, Your Honor.

Mr. Hogan: They said they were torn down, if Your Honor please.

Mr. Brown: I beg your pardon.

The Court: Who said that?

1938 Mr. Hogan: Mr. Palmer did.

Mr. Brown: I beg your pardon. She said she tore the garage down after they took over.

Mr. Hogan: And they took over in September—August.

The Court: Of course, we want to get on with the trial. Let's don't put on witnesses to testify to something that is not in dispute. If there is any contradiction that this witness wants to make, let him testify and get his testimony through with.

Q. How long did Mr. Allen keep those premises?

The Court: Is there any question about that?

Mr. Brown: Not a bit.

The Court: If he is going to say something different from what Mr. Allen said, I will let him testify, but if he is merely going to say the same thing that Mr. Allen and Mr. Palmer said, we don't want it put into the record again, do we?

Mr. Hogan: No, sir, we do not.

The Court: Will you assure me that he is going to say something different?

Mr. Hogan: Well, now, I don't know about Mr. Palmer. I just got this transcript a moment ago, if Your Honor please, if you will just indulge me a minute.

Mr. Brown: I submit if he is putting on a
1939 witness he doesn't know what he is going to say—

The Court: I don't think we put on rebuttal witnesses without knowing what they are going to testify about.

Mr. Brown: That's highly unusual.

Mr. Hogan: If Your Honor please, at this time, this is a very crucial stage of this trial.

Testimony of Ivan Carlisle

Mr. Brown: I don't know that we need any statement in front of the jury either.

The Court: Mr. Hogan, take your witness out and talk to him, if you have any question about what he is going to say, and confine his answers to rebuttal. Now if he is going to say the same thing the transcript says, let's don't waste time on it. He is a rebuttal witness.

Mr. Brown: I would like to ask this witness one thing.

The Court: All right.

Mr. Brown: Didn't you talk to Mr. Hogan about a month ago, all about this case?

The Witness: No, sir.

Mr. Brown: Didn't you talk to him about a month ago?

The Witness: He came out to my place and asked for the records in regards to the camp, and I told him I had no records.

1940 Mr. Brown: So you have conferred before this morning with Mr. Hogan about this case.

The Witness: That's all that I ever said to him.

Mr. Brown: And you conferred with him again last night?

Mr. Hogan: Yes, sir, I will state that.

Mr. Brown: I submit the defendant's counsel should know what this witness is going to say, when he puts the question to him.

Q. All right, now wait. Mr. Carlisle, would you divulge to me any information about this case?

A. Beg your pardon?

Q. Would you tell me last night what you were going to say or what you knew about this case?

A. Would I tell you?

Q. Yes.

A. No, sir.

Q. Why wouldn't you?

A. I didn't want to get mixed up in it.

Q. Didn't you tell me you would have to consult your own attorney before you would testify?

A. Yes, sir.

The Court: Now, Mr. Hogan, ask him the question. You have talked to him twice and he said he wouldn't tell

Testimony of Ivan Carlisle

you anything. Let's have him testify.

1941 Mr. Hogan: In the interest of fairness, I am taking a chance on what he is going to say.

The Court: In the interest of time, let's have him say it.

Mr. Hogan: They have made some pretty serious charges here.

The Court: Regardless of that, get along with the witness.

Q. Have you lived in Jefferson County and Hardin County most of your life?

A. Most of my life; yes, sir.

Q. After you leased this place to Mr. Allen, did you go by there frequently?

A. I was by there. I was a salesman selling automobiles in Louisville.

Q. Were those accommodations left there on the premises after you had turned it over to Allen?

A. Yes, sir.

Q. That tourist camp accommodation over that garage?

A. Yes, sir.

Q. Did he keep a record there, a registry?

A. I couldn't say that. I don't know.

Q. Did you see tourists in there from time to time as you went by there?

1942 A. I can't say that I did; no, sir.

Q. Was the garage still there and the accommodations?

A. Yes, sir.

Q. You went to collect your rent, didn't you?

A. What I could get.

Q. Did he pay you?

A. He did not; paid his first month and run him down for the rest.

Q. What did you do with Allen? Did you cancel his lease?

A. Yes, sir.

The Court: Any question about that?

Mr. Brown: No, sir. He sold this property on the 13th day of July, 1931.

Testimony of Ivan Carlisle

The Court: Now Mr. Hogan, I have asked you to put in rebuttal. There wasn't any question about cancelling the lease or anything else. Let's restrict the witness to rebuttal. You know what rebuttal is.

Q. There weren't any tourist cabins on there, were there?

A. No, sir.

Q. But that was a tourist camp, was it not?

A. Yes, sir.

The Court: Just a minute. This witness has testified that there was a garage and two rooms over it. He hasn't said it was a tourist camp. That's all you said was there in the way of accommodations, isn't it? Let's don't lead the witness into saying something that is not consistent with the facts.

Q. Mr. Carlisle, was that a tourist camp you operated there?

The Court: That's a conclusion. Tell what was there. If there is anything different from what you told, all right.

The Witness: Nothing at all.

The Court: All right, don't tell it over again.

Q. Was there a building besides the garage there?

A. The main building; yes, sir.

Q. What was that used for?

A. Dance hall. When I had it we used it as a dance hall, and a bedroom, kitchen, and my bar room.

Q. Where were you yesterday, Mr. Carlisle?

A. Where?

Q. Yes.

A. The FBI had me.

Q. Where?

A. Over in his office.

Q. Did you make a statement to the FBI?

A. I did.

1944 Q. Tell them what you have told here?

A. Yes, sir.

Q. In substance?

A. Yes, sir.

Q. Where were you Thursday?

A. The FBI had me.

Testimony of Ivan Carlisle

Q. Where?

A. The FBI had me.

Q. Where?

A. Over in his office.

Q. Did they know Thursday and Friday what you had testified here?

A. Took my deposition, I judge they did.

Mr. Brown: I will stipulate we did, and I have his statement right here.

Q. Could you get away from the F.B.I.? Would they let you go?

A. I hardly think so because they went with me everywhere I went.

Q. Oh, they did, did they? Were you in their captivity?

The Court: Is this in rebuttal?

Mr. Hogan: It is bearing on this case.

The Court: Is this in rebuttal?

Mr. Hogan: Well, I couldn't find him.

1945 The Court: All right. Let's restrict him to rebuttal. You know this witness is a rebuttal witness.

Mr. Hogan: That's all, your Honor.

Cross-examination by Mr. Brown.

Q. You told everything to the FBI the exact truth, the way it happened.

A. That's all I can tell anybody, is the truth.

Q. And during the period of June, July, August and September, you had nothing to do with this Beech Grove Inn or Beechwood Inn premises.

A. The best of my recollection, I left there the first week in June or the second week in June.

Mr. Brown: That's all.

Mr. Hogan: That's all, if Your Honor please.

The Court: That's the case for both sides?

Mr. Brown: Yes, Your Honor.

The Court: I understand then that the Government in the arguments will open and close?

Mr. Brown: Yes, Your Honor.

The Court: And in accordance with the conference

Proceedings.

which we had this morning, each side will take approximately two hours or maybe a little more if they are not completed at that time. I will notify counsel when two hours is complete, and if they have not completed at that time they will close shortly after. Is that agreeable to both sides?

Mr. Hogan: Yes, sir.

Mr. Brown: It will be two hours or less as far as the Government is concerned.

The Court: The Government will divide its time then between the opening and closing arguments, and in the opening arguments will make a fair presentation of the points on which they rely?

Mr. Brown: Your Honor, what time do you have by your watch?

The Court: I have twenty-six after 10:00.

Now there will be no coming in or going out of the court room while the argument of any attorney is taking place. They can leave and enter between arguments. While arguments are going on there will be no entering or leaving. Anyone is not willing to stay until the argument is over, they better leave now.

Is everyone in, Mr. Marshal, that wants to come in?

The Marshal: They are all in.

The Court: All right, the opening argument will be made by Mr. Inman for the Government.

1947 Mr. Inman closed for the Government, as follows:

Mr. Inman: May it please the Court.

The Court: Mr. Inman.

Mr. Inman: Members of the jury, for the past two weeks you have listened to the sorry story of a misspent life. You have listened to the tale, to the life history of a brilliant mind turned to crime. Nearly two weeks ago here in this court room, I outlined to you the evidence that would be introduced by the Government to sustain the charges laid in this indictment. You have heard more than a hundred witnesses, you have seen the reaction of those witnesses, you have observed them and listened to them. The whole picture, pieced together by that more than a

Proceedings

hundred witnesses, tells to you, shows to you, the life and crimes of Thomas Henry Robinson, Junior. We have shown you that he was born in Nashville, that as a youth he had every advantage, that he was the only son of indulgent parents, that his whim was their law, that at the age of sixteen when most boys are getting bicycles and roller skates, this defendant is presented by his mother with a Buick coupe automobile. At a time when most boys are in ordinary public high schools, this boy is sent by his parents to a private preparatory school. You remember the Wallace Preparatory School. At a time when

1948 most boys are earning their own living, he is sent by his parents to one of the Nation's outstanding universities, Vanderbilt, studying there the law, excellent grades he made, you heard them, a fine student, a student of an old and noble profession, a student of the law that the evidence shows he was so systematically to break. He trained himself. He had good instruction.

And the evidence shows, then begins a series of events that have been pointed out to you. His marriage to a young lady in Nashville, the marriage that he calls a forced marriage, he refers to it only as that, a marriage that resulted from his own acts with this young lady. Shortly after that marriage a baby was born, and it is significant there the same parents who gave him the Buick, who provided him all the luxuries, came immediately to his rescue and his father filed a petition for annulment. There for the first time this defendant brings into a court of law his pattern of defense. What did he say? The girl was no good. The girl's character was attacked. And you heard the final court order. Finally a divorce, and then another marriage, a marriage to Frances Althausen. And then the evidence shows he moved from his father's home into an apartment, and to secure the money he needed the evidence shows you what he did. He entered the front door of Mrs.

Lamb's home and Mrs. Waggoner's home, and established the pattern, another pattern of his vice, entered the front door in an assumed character, a deputy sheriff, stole their jewelry, forced the ladies and the maids to do his bidding, stole their jewelry and their

Proceedings

automobile and departed, and the evidence shows you that some two months later he was identified, apprehended. The same father came immediately to his rescue, and there he established his third pattern.

When he was faced there with the penitentiary, as the evidence shows you, he and his father and his lawyer went to the Deputy District Attorney and said "insane"—"insane." And they sent him to a hospital for ten days for observation. Robinson himself explains that. He explains that. He tells Mr. Bate in his letter which was read to you, "I was never a mental case. I have no psychosis and that former decree of insanity was the result of my father imposing on his friendships." As fine a statement of what happened there in Nashville as any man could make. His father imposed upon his friendships when this defendant Robinson, Jr. faced prosecution for robbery. Then he was sent to the Central State Hospital, then transferred to Bolivar, and Dr. Cocks, you heard him testify, said, "We had to release him. He was not insane. We could not hold him. He had too much mother and father." You heard the doctor say that. "Why did you release him, Doctor?"

"We could do nothing else. He was not insane. His 1950 was not a defect of mind, but of character," said the doctor, and he was released from Bolivar, Tennessee.

And the evidence shows you his employment, his work as timekeeper, his work at keeping records. True, he didn't hold the jobs long. The evidence shows you that in 1931 he came to Louisville, his father with him, introducing him to Mr. C. C. Stoll, his father still imposing on his friendships. And he secured from Mr. Stoll employment for this defendant Robinson, and for a period of approximately five weeks he worked here at the Second and Broadway station, a filling station attendant, pumping gas and parking cars, and there in all probability he did see Mrs. Alice Stoll, in all probability he did park her car or see her park it. He worked there. He knew who she was. And then of his own volition he left to secure better employment, to go with an insurance company, and then shortly after that, in late August or the first of September, accord-

Proceedings

ing to his testimony, he left Louisville, and he was gone to Nashville and to Chicago.

There we find him in Chicago in the spring of 1934, working at the Forsythe Building. Dr. Long tells you of his actions there, the dentist who waited on him some nine or ten times. He tells you he was a perfectly normal individual. He tells you, "I asked him why he worked there.

He impressed me as an unusually bright man. We
1951 had discussions. In my opinion he was perfectly normal and certainly knew right from wrong." We

find him there in Chicago, working there under his own name, and there we find him assuming the name of John Ward when he rented that apartment at 4639 Magnolia Avenue. John Ward. You have heard that testimony, how that apartment was rented, how he and his wife, Frances, lived there as Mr. and Mrs. John Ward, how he went to the Saunders-U-Drive-It Company, and you recall that witness who tells you that this defendant Robinson as John Ward talked him into violating his own rule that he had established for his company. "He was certainly a bright young man," he said, "normal, intelligent, spoke well, and he convinced me that I should violate my own rule that I had established and let him have the automobile." And there he took that car as John Ward, adopting the name of a former employer. You heard Mr. John Ward testify, the employer. He discharged him because of his criminal record, offered him other employment where he would not be bonded. You heard that testimony. And after he secured this automobile in Chicago from the Saunders System, he went to Indianapolis with his wife, and there as Mr. and Mrs. Thomas W. Kennedy he rented the hide-out apartment you have heard about, 2735 North Meridian, and

1952 from September 22nd to October 8th there he was living in that apartment—planning, typing, scheming the crime that he was to commit in Louisville, planning to kidnap Mr. C. C. Stoll, planning to make easy money easy, and typed out the ransom note that has been read to you a number of times, typing it on this typewriter that he purchased here in Louisville at the Meffert Equipment Company, typing out to the Stoll family a message of fear,

Proceedings

a message that would cause the Stoll family to pay money for the release of Mr. Stoll; threats as to what he would do with him, how he would dispose of the body. His training in the criminal law taught him concerning corpus delicti. He uses it in this note. Find the body to prove a murder. He knew that, and he impressed the family, or intended to with this letter, that he did know that. And did he know the law? Did he know the penalty? "Ah, yes," he said. He knew that he was subject to the death penalty under the laws of the State of Kentucky or under the federal law or Lindbergh Act. He said, "We know, we know we are subject to the death penalty." He knew it in that apartment when he wrote that letter in Indianapolis and he knows it today, and he has known it since his days in the law school at Vanderbilt. Yes he knew and here he wrote his supreme effort to instill fear in the Stoll family.

Having completed his effort to instill fear in 1953 the Stoll family, he proceeded to give directions.

Thoroughly and systematically he worked it out there at Indianapolis, full directions of what to do. And the evidence shows you that, having planned his crime, having prepared in advance his ransom note, having planned in advance this note to inject sufficient fear into the Stoll family to cause them to pay him \$30,000 for the release of Mr. Stoll, he proceeded to Louisville in the automobile he had taken from Saunders U-Drive-It. And we find him that night, the night of October 8th, registering in the Tyler Hotel here in Louisville, again under an assumed name, John Ward.

What did he intend to do when he came here? The note he wrote tells you what he intended to do—to kidnap Mr. C. C. Stoll. And what did he do? He went first to the home of Mr. C. C. Stoll and how did he get in? Very little different from the way he got into the homes of Mrs. Lamb and Mrs. Waggoner. Instead of being a deputy sheriff when he arrived at Mr. Stoll's residence, he assumed another pretended character. He assumed the character of a telephone repairman.

He went into the front door just as he did at Mrs. Lamb's and Mrs. Waggoner's. He tried to find Mr. C. C.

Proceedings

Stoll and found him not at home, unable to locate him.

Then did he give up? No. He went to the next door, **1954** to the home of Mr. George Stoll. And how did he get in? The same pattern that had been his since the day he knocked on Mrs. Lamb's front door. He went in in a pretended character, still the character of a telephone repairman. He knew that that would gain him immediate entrance, and he got in.

He looked through that house; went upstairs and didn't find his victim and he left. And then we find him next at the garage of Mr. Kottke on Bardstown Road, inquiring the directions to the Berry Stoll residence, inquiring the directions to Line Kiln Lane, and Mr. Kottke furnished that direction. He told him how to get there and, as Mr. Kottke said on cross-examination, "I must have done a good job because he got there, didn't he?"

And the evidence shows you next that he is at the home of Berry Stoll. How did he get in? How did he get in any house he ever got in? In the same manner—go to the front door and, in a pretended character, gain admission. Still the telephone repairman but oh, what small difference from the pattern he cut in Nashville when he first started into Mrs. Lamb's home! The underlying principle is all the same. It's all of the earmarks of Thomas Robinson—knock on the front door and in a pretended character enter the house.

1955 And on October 10, 1934, that is what he did: A telephone repairman again. There he made sure what was going on. "Who is here?" he inquired of the maid. "Is the chauffeur, the yard man—who is here?" When he satisfied himself that there was only one person and the maid other than Mrs. Stoll on those premises, and that that old man would leave by four o'clock, he busied himself. He went to the garage to investigate, he went to the basement to investigate; he went to the telephone box and cut all the wires and removed them from the box, and in his pretended character he then gained entrance to the second floor of that Stoll residence to work on the extension. And Mrs. Stoll, who had been ill, moved from her bed room to the guest room to allow Robinson whom she

Proceedings

thought was a telephone man, to work on the extension—and he went there.

He asked the maid for her help—all planned. He now had a situation where there were only three people on the Stoll farm, Mrs. Stoll, her maid and himself.

The wires were cut, and then he engineered that situation so that all of them came together on the second floor of that house. Then comes that gun in the back of the maid and he marched her into that room. You heard those details. Mrs. Stoll tells you what happened—how she tried

to dissuade him, offered him money, and when he
 1956 laid that gun of his on the bed how she made a dive for it and how he pulled out that iron pipe and hit her over the head, how he stunned her, how she ordered the maid to get the other gun and when she started after it herself he hit her over the ear with that pipe that this defendant sat here and told you he had never seen before, and Commander Dewey tells you he did see it.

He hit her over the head and the blood flowed in that room, on to the bedspread, one spot the size of a large dinner plate and another the size of a saucer. Who told you that? Mrs. Stoll told you that. Ann Woolet told you that. William Marshall Bullitt told you that. Captain Messmer told you that. Coastguardsman Creagor told you that. Who tells you it didn't happen? The defendant tells you that.

That is the picture of that guest room—the blood of Mrs. Stoll there on that bed as the result of a blow from that pipe wielded by that defendant.

Then he forced the maid to tie her hands, and then he tied the maid and took Mrs. Stoll away from that home.

Did she go willingly? With her head split open, the blood running down her back, with her hands tied, a gun in her back in the hands of this defendant? If that is willingly, then I do not understand the term.

1957 And at the point of that gun he took her in that condition to this automobile he had gotten from Saunders, put her in the back of that car on the floor, tied her ankles and covered her with a blanket and newspapers. Willing to go with him? Wanted to go with him? People

Proceedings

that want to go, people that are willing to go are not beat over the head with iron pipes, are not taken at the point of gun, are not taken with their lips taped, their arms bound and their ankles bound.

And off to Indianapolis he went with her, having left that note in the Stoll residence, having changed it in the last few minutes to meet the situation, having changed it from Mr. Stoll to Mrs. Stoll. Intended for Mr. C. C. Stoll at first, he wrote, "The same for Mrs. Stoll," and increased his demand to \$50,000.

Then off to Indianapolis with his victim he went. And in the meantime you heard the testimony of what happened here. The maid freed her ankles. Mr. Berry Stoll came home and found the situation that confronted him in that guest room—his wife gone, the blood from her head there on the bed, the maid tied, the pipe there, the ransom note. He immediately called for assistance, and those witnesses who got there first tell you what happened and what they saw.

1958 Mr. William Marshall Bullitt, an attorney of this city, tells you what he saw. Mr. John Tarrant tells you. The police officers tell you. Miss McHenry tells you. The witnesses who, as to the truth of their statements, no question can be raised, saw what they tell you they saw.

Then the note was read.

The kidnapper in Indianapolis had taken his victim, Mrs. Alice Stoll, to his apartment that he had rented under the phony name of Kennedy. He took her in in the nighttime, through the alley, into an apartment where the shades were down. And what does he say about that? "She could have jumped out the bathroom window," he said.

Consider this: Mrs. Stoll entered that apartment without knowing the surroundings. The shades were down. If you had entered this court room in the nighttime, with all of these shades down and if you had not seen through these windows, there would be no way for you to know that there is a court just outside that window, and until you were released and until those shades were raised you would never know it, and that was Mrs. Stoll's condition in that apartment as she testified to you.

Proceedings

"What was outside the window?" "I don't know, the shades were down."

1959 Oh the defendant knew! Yes, he knew every inch of that apartment and the surrounding territory. He knew what the front entrance looked like. He knew what was beyond that solid door that was the front entrance. He knew what was beyond that window that was covered by the shades. He knew all right. He knew that there was a garbage can on the back porch. He knew those things because he had not been taken there as a kidnap victim—he was not there as a dupe. He had examined that property. You and I now know what is outside those windows. Mrs. Stoll now knows what is outside those windows just as we know that these courts are on either side of this room, but we know it only because we have been able to see what is there.

And the victim of this case says, Mrs. Stoll, and that is corroborated by this defendant, the shades were down. And she did not know and as you can well see she could not know what was there.

"Didn't she go to the bath room," says counsel. Of course she did. And what happened—he sat outside with a forty-five. "Couldn't you have jumped out a window?" And he pulls the window here, and you can see from that plat just where that window is. Consider this: The window he is talking about is right there, members of the jury. The living room is right here, looking into

1960 the bath room. Consider this: He showed you a picture taken from the bed room, looking right into that window. You remember that picture introduced by the defendant. A matter of approximately three steps for this defendant from the living room to that point where he is in direct line with that outside bath room window. And he asked why she didn't escape. He was there with that forty-five and in that small apartment, not over three or four steps necessary for him from that living room to have a direct view of the bath room window he has made so much fuss about. The bath room window that they blame Mrs. Stoll for not going out.

They would have you believe that it would have been

Proceedings

impossible for this defendant to have stopped her had she gone out that window. But when you consider the smallness of that apartment, and the short distance from the living room to a point where he could control that outside bath room window, I submit to you from that argument that Mrs. Stoll did not escape is one that does not justify consideration at the hands of reasonable men.

And then he begins his further acts of terror. Terror then not only for the family but terror for the victim. Binding her and taping her and placing her in that small closet while he went out to further terrorize
 1961 her family, to call her friends on the phone, to write letters, to direct his father that he was named intermediary, and to change the intermediary to his own wife, Mrs. Frances Robinson. Carefully planning, he moved, carefully writing each direction.

"I am the kidnapper of Alice Stoll." That is what he said in Indianapolis in October 1934. That is what he is today, the kidnapper of Alice Stoll.

"I am the kidnaper of Alice Stoll," he writes, "She is alive and well and has only a small cut on her head. Change the intermediary. Turn that money over." Did he say, "My wife"? Was he so unaccountable for his actions that he said, "Give it to my wife, Frances"? No! He addressed this letter to Thomas Robinson Sr., and he said "Turn it over to your daughter-in-law." "Your daughter-in-law." The same words that you would use or I would use to describe her. He didn't say "My wife." No. This was well planned. "Turn it over to your daughter-in-law. She will have to make a trip." And she did make a trip.

And you heard the proof. The \$50,000 was raised here in the Fidelity & Columbia Trust Company. Sent by express as he demanded; valued at \$10.00; directed to Mr. Robinson Sr. and delivered to him and by him to the wife of this kidnapper.

And you have heard that story. She went to
 1962 Indianapolis from Nashville and turned over to him the \$50,000 just as he had directed. Just as he had planned. Just as his letters directed.

Proceedings

And then consider his actions right there when his wife came in. So unaccountable he did not know what he was doing, his counsel will tell you. There was \$50,000 and \$130.00 in that apartment. The \$50,000 in ransom money, and the other money that Frances Robinson had that was not ransom money—not hot money as he calls it; cold money, as he is pleased to call it.

Was he unaccountable? Or was he carefully planning what to do? What did he do? He took from his wife that \$130.00 of cold money. Tossed her a package containing \$470.00 of the ransom money and made his get-away.

Why did he do that? The answer is obvious. He wanted something that was not ransom money, something that was not being checked, something that couldn't be checked, to make his get-away from that hideout.

And before he left what did he do? He wrote to the Custodian. You remember that letter. What did he say he was going to do with Mrs. Stoll? "I want you to discover her. Go to my apartment and you will find her in the closet next to the bath room door." The same one he had bound her and kept her in every day for 1963 that week. "Go there and find her," he said to the Custodian.

But again he changed his plans because his wife, Frances Robinson, wouldn't go with him. She stayed. And he left and he gave them directions, "Don't leave this apartment." And to make sure that they were following his suggestions, his directions, what did he do? He was gone some 20 or 30 minutes and then he bounced right back into that apartment—checking. Putting into Mrs. Stoll more fear. Even after he had the money he was not through. He was still, by his acts, hurting her.

Then in the afternoon she and Mrs. Robinson left and went to the home of the Cleggs, and was returned to Louisville. And what do they find of her condition? You heard Dr. Frazier. Her head was matted with blood; her lips were raw from the adhesive tape; her arms were marked, her wrists were marked, from the wire. Her nerves were shattered. Harmed? Had he harmed her? Without kill-

Proceedings

ing her, what more could he have done?

You heard her husband testify as to the condition he found her in. You heard Mrs. Stoll describe it. You heard the doctors describe it. You heard her friends describe it. Her nerves were shattered, her face—her lips—her head. Released unharmed? Of course not! Harmed, and harmed by the action of this defendant who **1964** boldly announced "I am the kidnapper of Alice Stoll."

You heard the story of his trips across the continent, of his life in the hotels in New York, his beach cottage at Rye, New York, his trip to Los Angeles and the fine houses and hotels that he lived in, his trip to St. Louis where he met his mother and turned over to her \$4000.00 of money for which he had given ransom money, how he washed it carefully to remove his fingerprints. Unaccountable? Think of those things, Members of the Jury, when his counsel tells you that he is unaccountable. Ask yourself how he successfully eluded the FBI for nineteen months and a day. Unaccountable? Careful, planning, shrewd, changing his name, going from hotel to hotel! What does Mrs. Anna Webb tell you? "He was above the average," she says, "I consider myself above the average but he was head and shoulders above me. He had the answers before you asked the question."

And he traveled with Jeane Breese from hotel to hotel, buying automobiles, spending the money he had gotten from this ransom. Was he careful with it? Was he? What did he do?

In New York at Forest Hills we find him renting that lock box, a storage place. You recall the testimony of the auditor from the Fireproof Storage who helped **1965** him carry that file case in. There to deposit his money, not in a bank where it would be found, but in a storage house. And out in Los Angeles do we find him putting his money in a bank? No. Another locked file in a storage house. Spending his money carefully? No, carefully changing the ransom money to what he calls cold money—telegraphing it from Los Angeles to himself at San Francisco, letting the Western Union Telegraph

Proceedings

Company become the agency for changing the money, delivering to him in San Francisco good money—cold money.

Careless? Unaccountable? A man who did not know what he was doing? Consider these things when his counsel tells you that. Careful. Planning. Shrewd.

You recall the testimony of Miss McHenry of the telephone call and the letter. You recall the letters written by Mrs. Stoll. Those are important parts of this evidence.

Then we find him out there in Glendale, California, renting the house at 510 Kavanaugh Road. And you heard Mr. Bugas, who was then acting in charge of the Los Angeles office, as he told you how, on May 11, 1936, he with other agents went to 510 Kavanaugh Road. How they got this defendant to the door—and isn't it amazing

—his old pattern there doubled back on him. Mr. **1966** Bugas went to the front door in a pretended character and drug out the kidnapper. A casual passerby, he told you; he had simulated a casual passerby and he knocked on the front door and who answered? Tom Robinson. He brought him with ransom money in his pocket, and a loaded forty-five automatic in his pocket, two loaded forty-five automatics in his bed room, a loaded thirty-eight revolver in his top dresser drawer, and a loaded shotgun standing by the door. Careless? "I had it to protect the money," he said. "To protect it from the FBI?" asked Mr. Brown. "I wouldn't say that," said Mr. Robinson, but he wouldn't say no.

\$4687.64 was recovered there by the Agents of the FBI, and of that money \$2330.00 was original ransom money—all that was left of the original \$50,000—\$2330 locked in a box and the key in the pocket of this defendant.

And he was brought back to Louisville, and later examined by the doctors who have testified to you. The doctors in the institution, the doctors appointed by this court who were subpoenaed as witnesses for the United States.

There are just a few things more that I want to point out to you. I want to point out to you now one of the oldest and best known tricks of criminal defense. And I want you to be alert to watch for this. It is an old

Proceedings

trick of criminal defense to attempt by every means
1967 to divert the attention of the jury and the Court from the defendant and to place that interest and that attention some place else. Forget Robinson, counsel for the defense would have you do. Forget him, he will plead. Try the FBI. Consider what they did or didn't do. Try the prosecuting attorney. Consider what he did or didn't do. Try anybody. Try Alice Stoll. Try her for not escaping by the bath room window as this athletic young lady did here in this court room. Try Alice Stoll. Try the maid. Try Berry Stoll. Try anyone, if you please, but don't try this defendant.

Members of the Jury, there is only one defendant on trial here today, and that is Thomas Henry Robinson Jr. He is charged with only one offense and that is kidnapping. Don't be misled by that attempt to divert your attention from the kidnapper in this case. That attempt, I am sure, will be made. It is always made.

Consider the similarity of the defenses that has made up the pattern of this defendant. I have pointed out the similarity of the way he entered every home, every time in a pretended character.

But what about his defense? On his forced marriage, the woman is no good. Attack her reputation. On his robberies, insanity. He is released and again
1968 charged with robbery. The women are no good.

What did he say to Mr. Dick Atkinson, District Attorney General, from Nashville? He told you. "I am not afraid of those women testifying against me. I will testify that I took them to the outskirts of Nashville and they voluntarily had intercourse with me. I will smear them."

And in this case do we see that pattern? What does he do in this case? He joins the two—insanity and attack the woman.

What did he tell Mr. Atkinson? "I will testify that I took them to the outskirts of the city and they voluntarily had intercourse with me." What did he tell you about Mrs. Alice Stoll? "I took her into the outskirts of the city and she voluntarily had intercourse with me."

The same old Robinson; the same old pattern. Just as

Proceedings

true to him as his fingerprints. Get in by a pretext. Get out by attacking the woman. That has been Tom Robinson since the day he stood on the front porch of Mrs. Lamb's home and knocked on her door. And it is Tom Robinson today.

He sat upon that witness stand and told you that he had been intimate with Mrs. Stoll. He offered not one line of proof to substantiate that. Only his own! Only his own!

"Where did you take her?" "To the Beach Grove
1969 Tourist Camp."

"Now at the Beach Grove Cabin", said his counsel, and Robinson corrected him. "Beach Grove Tourist Camp." The Tourist camp you have seen the picture of. The tourist camp where the sign is out front—the place where he said he took her, and the evidence shows, Members of the Jury, that that was a deliberate and diabolical lie, and it cannot be branded anything else. The place was not there. The cabins were not there. The first brick purchased to build those cabins was August 26, 1931, and since last Monday when the defendant took that stand and told that diabolical lie, the Agents of the FBI have been able to produce here in this court records and witnesses—records of the brick company that furnished the brick; the records of Mr. Palmer showing you that no cabin was rented there until October 12, 1941.

And then you saw that attempt to shift, and shift fast, this morning. There was nothing to do. Counsel and his client got together and there was a shift of places. "Get out of that cabin and get up over that garage. My goodness we didn't know all this." And when they found out there was a garage there, "Now we must move, and move hurriedly—get out of those cabins and get up over that garage."

1970 He told you last Monday that he took Alice Stoll on two occasions to a cabin that they rented at the Beach Tourist Camp and those acts of intimacy took place, he told you, at the Beach Grove cabin. That proves that he was a liar on that occasion as he has on other occasions, and he quickly shifted and said "Let's get out of the cabins and get up over the garage."

Proceedings

What did Mr. Allen tell you? "That is where my daughter was confined. A baby was born to her that summer and as soon as he moved out Mrs. Palmer moved in. Mr. and Mrs. Palmer and four children. Yes, it's amazing that those records were still here; that after 12 years we could go back and find that record of when that brick was delivered or the ledger of Mr. Palmer kept out there. But they were found. The records were kept and the records prove beyond any doubt that when this defendant followed his pattern of attacking the woman, this time he ran into a stone wall. Mrs. Stoll, the one woman of all his victims who has stood up and in a court of law testified against him. The only one who would not be intimidated. Mrs. Stoll who walked in and told you what happened. And he reverts to type, "I am insane, and the woman is no good." Just as if he had spread his fingerprints upon that plea, it is typical of Robinson; typical of this anti-social person; typical of a person, as the doctors told you last night, with criminal tendencies; typically the person with defects and deficiency of character.

There, Members of the Jury, is his weakness. Not a weakness of the mind, the doctors told you. Not an illness of the mind. Nothing wrong with him. In their language they say, "without psychosis". No mental disease.

Then where is his trouble? His trouble is the same trouble as with all criminals, he has no character. He has no firm foundation of character upon which to build life and, having no character, he resorts time after time to the same pattern in this case in the kidnapping, the kidnapping of Mrs. Alice Stoll.

And there is another thing I want you to remember when the counsel argues his case. Remember not only the witnesses who testify, but remember the witnesses who were here available and who didn't testify. Ask yourself, as this counsel points out to you, "the \$25,000 was laying on the divan in that hideout apartment." Ask yourself and ask Mr. Hogan, "Why didn't Frances Robinson come down here and say that? You had her here as a witness." I'll tell you why, because Frances Robinson wouldn't say he did not have it. And, like the attack on Mrs. Stoll, they like

Proceedings

to say upon the unsupported word of this kidnapper,
 1972 "I left \$25,000 there."

I submit to you that the government has shown that he spent more money than that in his wanderings and movements over the country.

Ask yourself, "Where was Mrs. Robinson?" She didn't testify because she wouldn't testify; she wouldn't say that that money was left there. That is the reasonable inference from that. Consider that well. Consider these defenses. He says, "I didn't kidnap her." He says, "She was up there in that apartment of her own free will", and he sets up to show how she could have jumped out the bathroom window.

If he was telling you the truth, if she was not there as a prisoner, why did they so elaborately prepare a bathroom window for the athletic young lady to jump out? If she was not a prisoner there would be no use to even intimate she could escape. If it was necessary for her to escape, then she was not there of her own free will and, having failed in both of those, he falls back to his first love, insanity.

Shifting in his defense just like he tried to shift from the cabins to the garage. His defenses, at one time no kidnapping, at another time she didn't try to escape, at another time insanity—shifting to whatever he
 1973 thinks is the present need.

Think of those things. You have seen him these two weeks. You have seen him consistently shifting from one defense to another.

I think I have pointed out to you the outstanding parts of this evidence. You heard it all. You saw the witnesses. You saw Robinson as he testified. You saw him as he fixed the crease in his pants upon the witness stand. As he sat there he told you what has been proved to be a diabolical lie, you saw he didn't bat an eye and you can reasonably assume from that, that having told one, without any compunction told a lie designed to serve his aim and to tear down the reputation of Mrs. Stoll, having seen him tell that lie, having heard him as he told it, and having seen the proof that it could not be true, the reasonable inference is that there is no reason to believe anything this

Proceedings

kidnapper says in his own behalf. He is here only in his own behalf.

Consider these facts. Consider this crime. Consider the viciousness of it. Consider the punishment that should be meted out. The Court will advise you that you act in an advisory capacity; that if you return a verdict of guilty and recommend a penalty of death, that will be advisory and the court will then determine in his own

1974 mind and in his own wisdom what the penalty should be.

If you return a verdict of only, "We the jury find the defendant guilty", without making a recommendation, then you have tied the hands of this Court. The Court then has no power to impose the death penalty even if he concluded it should be imposed. Return this case to this court giving to the judge of this court the power to, in his wisdom, impose any penalty that he thinks should be imposed. Do that by returning to this court a verdict, "We the jury find the defendant Thomas Henry Robinson Jr. guilty, and recommend punishment by death."

1975 The Court: Members of the Jury, due to the fact that it is now 11:45, and if defense counsel in his argument to you will use the two hours or more that has been allotted to him, it would take us unduly past your usual luncheon period. I have asked the defense counsel whether he desires to break his closing argument into two parts or whether he preferred to give it all at one time, and in response to his preference that he would prefer to make his closing argument uninterrupted by any such break as the luncheon hour it was decided to have the luncheon hour at this time, although it is a little early for you. We will come back correspondingly earlier than we usually do and have the closing argument for the defense counsel uninterrupted in that way, and rebuttal by the Government attorney immediately following.

Accordingly then, we will recess at the present time until 1:15, at which time we will resume.

Do not discuss the matter among yourselves or make up your mind on this case until all the arguments and instructions of the court are in, allow no one to discuss it

Proceedings

with you or in your presence; avoid contact with anyone who has any interest in this case.

An adjournment was taken to 1:15 p. m. the same day.

1976 After recess, court convened and the following proceedings were had:

The Court: Members of the Jury, counsel for the defense will close the case for the defense with his summation. Mr. Hogan.

Mr. Hogan: May it please the Court, Mrs. Elswich and Members of the Jury:

Whether you know it or not, the Court has imposed or did impose upon me a very heavy responsibility when he asked me on September 28th of this year to represent this defendant. The defendant, upon affidavit, stated that he was a pauper. Now you may say, "Well that was a lie; that was not true." But the Court isn't easily deceived as to that. You may think, "Well, the Court appointed you but we know that that boy has some of that \$50,000 or \$25,000 or whatever it was that he got and that, being a lawyer, you would not undertake this case unless you knew that he had some of that ransom money still hidden away" ready to probably divide with me if at your hands he should procure an acquittal.

But I assure you at the outset that that is not true. As I said, the Court is not to be deceived and I don't think the investigating forces of the FBI are to be deceived
1977 either. As a matter of fact, the investigating forces know where every dollar of that money is or went; otherwise they would have objected to this defendant coming in and asking this court to allow him to proceed as a pauper.

Under the law, I think as His Honor may tell you or may not, but I will tell you, there is no provision in the law for the payment of a counsel for a pauper defendant. It is strange that there isn't and there should be. There is a provision that expert witnesses may be paid. So there has been arranged for the payment to Dr. Solomon and Dr. Crice, his doctors, their fee out of the funds of the treasury of the United States; but I, as his counsel, have not

Proceedings

been paid anything and do not expect to be paid anything and will not be paid anything.

Now, with that premise made clear to you, what has been my undertaking? First of all, the indictment in this case charges a very grievous crime, a heinous crime. It charges that Tom Robinson Jr., with his wife and his father abetting each other or aiding each other, in the year 1934, October, kidnapped Mrs. Stoll and, while she was held for ransom transported her from Louisville, Kentucky, to Indianapolis, Indiana; that while she was captured, or in captivity, she sustained certain injuries and that when she was released she was in a harmed condition; or, I believe it says that at the time of her release she was not unharmed.

Under the Lindbergh Law or under the kidnapping law if that is true, or if you should believe it is true, you have the prerogative of recommending to the Court the imposition of the death penalty.

Therefore, with that in view, you will see that my position as defense counsel, my duties, have been tremendous. They have been trying and wearing upon me and my system. I have worked night and day as you know, not because I have any financial interest, but because the Court has asked me to do a job, and that is what I have tried to do.

Now let's see about the facts in this case. There has been developed into this case a most serious aspect. It is true that this defendant has kidnapped this good lady, Mrs. Stoll, that in itself is enough. If it is likewise true that he has come before you and maliciously told you an untruth, that is a serious offense in itself and a serious charge upon the character and reputation of a woman of Mrs. Alice Stoll's social standing and reputation. It is such that the damage can never be repaired. I am frank to say that. If this defendant has told an untruth about her in that respect, that is very serious, so serious that I would not feel that I would be justified in representing that type of defendant. But, on the other hand, he says it is true. Now, whether it is true or not, that is for you to decide. I have proceeded with utmost caution in this

Proceedings

matter. I realized the seriousness of a charge of that nature unless it could be founded upon some reason or some fact. So I demanded of this defendant, first, that he tell me the truth because I did not want to be led headlong into a situation that would backfire.

Therefore, I made him prepare in his own handwriting what he knew or what he thought he was telling me to be the facts in this case. Now of course you know that his statements have not been admissible against him. There is another reason why I cannot read you this statement, and that is because of the existence between attorney and client that confidential relationship which prevents an attorney from divulging facts given in confidence while the relationship of attorney and client exist.

But in his own handwriting this defendant has outlined to me what he says are the facts—

Mr. Brown (Interrupting): Now, Your Honor, I am going to object to that. He testified from the witness stand what the facts were.

Mr. Hogan: I am not trying to read it, and I am not going to refer to it only to tell this jury that
 1980 I wanted to be satisfied in my own heart and mind that he was telling me the truth because he said that he was going to tell the facts to you, of this jury.

If I had felt that they were untrue, I would have done one of two things, not continued in his case or tried my best to keep him from divulging such untruths if they were not the truth.

Now that's all I am going to say along that line. I might say that I believe that he told me the truth. Fantastic as it may seem, I am convinced that he told me the truth. It will be my purpose to convince you that those facts as he has related them on the witness stand which jibe with these facts right here, are the truth, Mrs. Elswick and gentlemen of the jury.

Now, what about Tom Robinson's life? Just what kind of a person is he?

He was born of Mrs. Jessie Robinson in 1907. His father was Tom Robinson Sr. He lived to be a normal boy. That is, his early life was normal. He went to Ross School,

Proceedings

which, I take it, is or was a grade school. There was nothing unusual about his early life that branded him as a precocious child. He did not steal nickles and dimes from his mother's sugarbowl to go to the picture show. There was no evidence of inclination of petty crimes in 1981 his early make-up.

Now that is important because we have had a lot said about psychopathic personality and constitutional psychopaths. I don't know whether you know what a constitutional psychopath is after hearing all of this evidence that we have heard from the mouths of these expert witnesses. Frankly, I don't know that I know what it all adds up to either, but from what all of them said, I gather that a constitutional psychopath is one that is born with that tendency or trend in his make-up. Some of them said it was hereditary. Others said that it manifests itself in very early childhood, small boys, grade 2, 3, 4, 5—where they would indulge in petty thievery or petty crimes, not the usual pranks of boys or the expression of exuberance in their make-up, which is natural if the boy is natural, but those little out-of-line things, petty thievery and petty crimes that begin to show what type of individual he is in early childhood.

Nothing unusual happened to this boy until he was about 11 years of age. He was in the State of Ohio visiting his aunt. He was kicked by a mule or a horse, I don't recall what the testimony shows, and sustained some damage to the bony structure of his face under his right eye.

1982 Now whether or not that played an important part in his later developments, I am not prepared to say and I don't think that was clearly brought out by any of these doctors. It is only a circumstance in the chain of circumstances in his life.

When he was fourteen or fifteen I believe the testimony shows, he contracted a deep-rooted, severe case of malarial fever. It was so severe (and you must remember he was living in the South) it was necessary for the doctors to administer to him quinine in the arm—intermuscularly I believe they said. In other words, they injected it into his

Proceedings

system as well as giving it to him through the mouth.

The next episode in his life, not abnormal personality, was the fact that he contracted tuberculosis in a very severe form. He was placed in a tuberculosis sanitarium, and there he stayed for a period of eleven months and during that time another serious malady overtook him, so serious that it added to his already serious condition, pleurisy. A pleuritic condition.

During that time he lost time from his school. After his being released from that sanitarium, he was placed in Wallace Preparatory School, it being thought that he could make up some of the time that he had lost by being in the hospital. He exerted a rather unusual effort **1983** in order to get good grades; and he did succeed in that to an extent that he got fairly good grades in that institution. He lacked one subject of graduating from that institution, geometry I think it was. He then went to Vanderbilt University, and there matriculated in the law class, and he was there some two and a half years.

There was nothing other than those maladies, or those diseases, in his make-up to that point that branded him a psychopathic personality in any degree or in any manifestation whatsoever.

He was well liked. He mingled among the best people in Nashville. He attended dances. He was a friend of James Melton who later became a radio entertainer and singer. He was a member of two fraternities and his life in Nashville and at Vanderbilt was normal except perhaps that he got good grades, and that does not brand him as a psychopathic personality in any manner whatsoever.

And then this tragedy, this shock upon his system, occurred.

His mother, I think mistakenly, she thought properly, purchased for her boy a Buick automobile. That no doubt caused him to be more popular with his young set, the boys and girls, and, as he told you, he picked up this casual acquaintance and from that time on he was always in **1984** difficulty because that tragedy was the turning point in his life, the turning point because it struck him at the very age when he was changing from a boy into a

Proceedings

man, that weak point in his system, already strained with the pursuance of his studies in Vanderbilt University, could not stand or absorb the shock.

Of course, I do not condone, and I don't expect you to, his actions with this girl that he picked up. It was as unfortunate for her as it turned out to be for him. But what about this girl?

They said he tried to smear this girl. Oh, they build a great big cobweb of suspicion in your minds about him and this girl. They tried to tell you that from that time on he entered upon a smear campaign. But I tell you that the records of the court belie that fact, and I am going to prove it to you. Mr. Brown introduced the records himself from the divorce action involved in that tragedy and, while they are not here, this is an exact copy and if he objects I will ask him to let me have his copy, and I will read from that; and what does the court say about this girl that they say Robinson tried to smear?

The Court says (and I will tell you that Tom Robinson Jr. filed the suit against the young lady because the young lady was charging him with being the father of
 1985 a nine-months child when he had not known her but seven months)—the Court says; not what I say or what the prosecuting attorneys may say, said of this girl and of this case:

"The defendant (that is the woman) has been guilty of such cruel and inhuman treatment or conduct towards the complainant (that boy right there) as to render it unsafe or improper for him to cohabit with her, as alleged in his amended and supplemental petition; that she did, subsequent to their marriage (that shotgun affair that you heard about) that she did subsequent to their marriage falsely, maliciously and wilfully charged him with having committed the crime and felony of rape upon her body prior to their marriage by forcibly having sexual intercourse with her while she was unconscious from the effects of some drug administered to her by him, said charges having been made by her since their marriage to a committee of the Ku Klux Klan for the purpose of having him mobbed or otherwise punished and mistreated by

Proceedings

the Ku Klux Klan; that in fact (and these are still the words of the court and not mine) the complainant did not administer any drug to her, nor did he forcibly have sexual intercourse with her as charged by her but all sexual re-

lationships had between the complainant and the de-
1986 fendant were consented to by her; that therefore the complainant, Tom Robinson Jr., is entitled to a divorce from said defendant woman on the ground of cruel and inhuman treatment, as alleged in the amended and supplemental bill; that the allegations made in the cross bill filed by the defendant woman, and the cross complaint are not sustained by the proof, nor has defendant woman sustained by the proof the allegations of her answer to the amended and supplemental bill of complaint."

Now that is a record of the Davidson Circuit Court in 1928. Not what I say, and not what Mr. Brown or Mr. Inman have said or may try to say about a smear campaign. Nor is it, Mrs. Elswick and Gentlemen of the Jury, any device or cloak through the arrangement of his father or the District Attorney as they would have you to believe this adjudication of insanity turned out to be.

If they make that charge to you that that was a frame-up, I say that they will come before you and make a direct charge and insinuation against the very system of justice that you are called upon to administer, to-wit: the jury system itself, and I don't think they'll try it.

Now, what were his actions following that tragedy in his life?

Of, course, it did have a decided effect upon him.

It took him out of his place in society. It threw
1987 him into a maelstrom, so to speak, of a cast-off. Qs-
 tralized from society. No friends, not the type that he had been accustomed to associating with. You have friends. We all have friends, or like to think we do. Even at your age in life or mine, don't you think that being deprived of a friendship and companionship of your friends would have a decided effect upon your mental condition? And you are not at the age of change from boyhood to manhood, nor am I. I sometimes wish I could go back to that age.

Proceedings

Now, what did he do? He manifested the first symptoms of dementia praecox. He changed from a pleasant sociable type of boy to a moody and morose sort of a boy. Those are the first symptoms. He was hurt. The shock to his nervous system, something had changed within. Whereas he was docile and a good-mannered boy before, he turned upon his father. He turned upon his mother. Normal, sane people don't do that. He slapped his mother in a fit of rage. His father properly chided him for it. He went and got a gun and was going to kill his own father and would have done so had not his mother interceded.

Do sane people do those things? Oh you say yes, psychopathic personalities do. Well, do they? Psychopathic personalities or kleptomaniacs, firebugs, etc.

1988 In other words, the wastebasket type—whenever they can't type them they throw them into the psychopathic personalities. That is what I got from all of the witnesses here. I will talk about that later.

He slapped his mother and was going to shoot his father, and his mother noticed a strange stare came upon him, in his eyes. Now had he done those things before this marriage? Don't you know that if he had been one of those petty thievery boys Mr. Wynn, Mr. Connelley, Mr. Moss and other members of the FBI would have gone down to Nashville and dug deep into the wastebasket and found some boyhood friends that would say, "Yes, sir, I knew Tom. Why he used to steal from his mother and steal from his Aunt. That he would go and steal the car out and go for a ride and go to the picture show. Yes, sir, he did that." Did they do that? Where is the evidence from the prosecution on that score.

There is only one inference to be drawn from their failure to produce it and that is that they did not find anything like that or they would have it here. Now that is the first signs of dementia praecox.

We learn he had a pretty good education. In all these mental diseases, schizophrenia, hebephrenic type, catatonic type, catatonic indicating wall climbers, wild hysteria. He is not a catatonic type but he was and at

1989 the time in question before you he was a dementia

Proceedings

praecox, paranoid type.

There he was, mad, insane stare, a complete change had come over his personality. He tore his shirt to shreds. Got angry at his wife because she had been to the grocery a few minutes, too long he thought, with his own mother. Was there any cause or justification in that thread of evidence or those facts to indicate a sane man? Sane persons don't tear up clothes. They don't have a crazy or glassy stare come over them. There he was—*dementia praecox*.

Did he remain in that state? No: He could have. I believe the testimony is that they could have two kinds, schizophrenia, a split personality—mad today or depressed and moody. Tomorrow a great big superman type.

Now what did he do? He was married to his second wife, didn't have a dollar in the world, got mad at his own people who were sheltering him; went out and rented an apartment for, I think \$45.00 a month, or whatever it was it was more than he could pay for. That in itself branded him as mentally sick or insane if you choose to put it that way, or call it that.

He didn't have a dime in the world to live on. But did that deter him? No, sir, not him. He was a super-
1990 man. Yes. He demanded the necessities of life.

Now I am not unaware that Mr. Brown is going to say that, rather than brand him as a superman, he will brand him as a criminal. But Gentlemen of the Jury and Mrs. Elswick, do sane persons go out and rent apartments and try to keep a wife and then go to the home of a woman in Nashville, whether he had known her or not he had lived in Nashville all his life and he was bound to be detected. What did he do? Did he get an insignificant article of jewelry? No, sir, he didn't do that. He is no petty thief. He went in there and he got the works. The superman! He got it all. He got the jewelry. He said he came for whiskey. He didn't want whiskey.

He took that jewelry to the bank and borrowed money on it.

Would a sane man do that? Because then you must remember he was a child, so to speak, a young man. Why, the banker ought to have known that that boy did not have

Proceedings

that kind of jewelry. I more or less blame that banker who loaned him \$500.00 on some of those articles.

But he went right down town in Nashville in the midst of all of his friends and acquaintances, and his father was a big bridge engineer, without any idea at all that he would ever be detected.

1991 When he got \$500.00 on some articles of the jewelry, I believe he took the car from in front of the home of the first woman and go to the second woman's home and, under the same guise that he was a peace officer, went into that home and said, "I want to get your whiskey." But he didn't get any whiskey there. That never entered his mind. He was way up in the clouds, riding high. The superman! He wanted big stuff and jewelry and he got it, too.

Was he sane? They say he is a criminal. I say a sane man would not do a thing like that.

Now what happened after that? He mingled down town; made no effort to run away. He was way beyond the pales of suspicion in his own mind. He had not done anything wrong because to him what he had done had no emotional effect upon him whatsoever.

We talked yesterday and the days before about the subjective mind and the objective mind and the unconscious mind and the conscious mind, and I don't think there was any disagreement about that from the doctors on either side. After all was said it was boiled down to this, that you formulate in your mind up here the idea. You probably remember that at home in bed you formulate ideas about your own affairs. You probably have many ideas, and probably some of them were fantastic ideas for the moment, and you immediately dismiss them as

1992 being fantastic. You had willpower. That is a demonstration of the other mind, the objective mind putting the brake upon the fantastic ideas formulated in the subjective mind.

Now we learn that when the subjective mind gets these wild ideas and the objective mind is not in coordination, not working together telling the subjective mind that that's wrong or that that idea is wild, we have an out-of-balance

Proceedings

make-up. The willpower is destroyed. The idea is there but the will cannot prevent it from going into action.

Now I think it is time right here to mention that one of their own doctors last night best demonstrated that in his own eager, honest, truthful way. Do you remember that little doctor that sat here? The young doctor from the General Hospital? He was so honest, he was wide open with the truth. Do you know what I asked him? I had asked him to give an example of a paranoid dementia praecox. He said, "Well if the demented person gets an idea in his mind that somebody is talking about him, he goes into action." And I said, "You mean he is one of those action birds?" And he said, "Yes, that is what I mean." And I said, "What does he do?" "Why," he said, "he goes to that fellow he thinks is talking about him and he does something." And

I said, "Let's carry it one step further. Let's assume that this demented person, this type of dementia praecox person, gets it into his head that somebody is doing him wrong, blocking his path, has got it in for him, now what does he do?" And do you know what he said? He said, "He goes into action." And then I said, "Thank you, Doctor." He had clearly demonstrated to you, their witness, the typical type of dementia praecox, and that is what this boy was. He was an action bird, a paranoid type of dementia praecox, a grandiose type. A superman, in his mind,—very foolish I think, and I know you do, too, because that condition existed in him and his willpower was destroyed. That is the test that His Honor is going to tell you in his instructions when he instructs you upon the defense of insanity, that even though he knew right from wrong and maybe he did, I will spot you that, Mr. Brown, one of our own physicians said he thought he did and if I didn't admit it I know you would make me admit it. Dr. Brackin says, "I think he knew right from wrong, but I don't think he had the objective mind and willpower to control his actions."

Now His Honor is going to tell you that if you believe this boy knew right from wrong, but did not have that braking power, that willpower, that still will excuse him from the offense charged in this indictment. And if he

Proceedings

1994 does not do that, all I have said to you, I will take it back. Just remember that. But I am confident that His Honor will tell you that, and I am going out on a limb, so to speak, in making that deduction, and if he doesn't tell you that, that this boy's will was so destroyed, not because he wanted it to be or voluntarily wanted it to be, but if it was involuntarily, unconsciously destroyed and he could not help what he did, then it is your duty to acquit him.

Now that builds up before you, I hope, what is known as a paranoid type of dementia praecox. In other words that constitutes an insane person whom the law says "You may not punish but you should acquit if you believe he is that type."

There are a lot of facts in this case that I don't know whether I am going to have time to cover or not. I thought two hours was going to be a long time and I have been talking here for some fifty minutes already and I have not gotten even started. I hope His Honor will not call me exactly on the hour because I have got a lot to say to you.

He was indicted for these robberies. He should have been. They did not know whether he was crazy or not. He was just another boy. Now don't you know that if his father was wielding the influence, or if the prosecuting attorney was in on the influence, that there 1995 would never have been any indictment against this boy? They would have hushed it up. I think the fact that they come before you and intimate that Dick Atkinson from Nashville, the national Congressman, was in on that scheme is a direct attack upon our system of government.

He was indicted. His attorney says, "I think this boy is insane, Your Honor," and his father evidently thought likewise: Well now the Tennessee law, and the Kentucky law for that matter, when a defense of insanity is imposed and there is reason to believe that he was not sane because he would not have pulled such crazy stunts—the Judge says "Let's see if he is. We have got ways and means to find out. Let's send him out to Central State Hospital for a period of two weeks observation and let those men out there who have the facilities to examine him,

Proceedings

tell us about that."

Now is Mr. Brown going to attack that procedure? Is he going to say that that was a scheme or device or a cloak? If your boy was in trouble, and you thought he was insane, you would want to find out about him, I am sure.

So he was sent on that period of observation for two weeks, and what does that record disclose? Why there were some young girls here from the high school, and I know that they were frozen to the seat when some of this
1996 stuff came out. I don't need to repeat it all to you.

He thought Dr. Brackin was against him. He thought he could get a gun and shoot his way out of there, and that somebody was going to bring him a saw so he could saw his way out of there. Why he even said, "I have got a job down in Memphis paying me \$200.00 a month and I am going to get out of here and go down there." Now that was just a wild dream. Nobody ever told him that. Then he said, "I have got another job" somewhere. Now that wasn't true. Nobody had told him that.

Four doctors, Dr. Farmer, Dr. Brackin, Dr. Love and Dr. Johnson, said to the Court, "We think this boy is dementia praecox, schizophrenia, split personality, and too dangerous to be at large upon society." Twelve men, they weren't using women so extensively then, Mrs. Elswick, so they got twelve men of his peers and they put them in the jury box and they heard evidence as to whether or not he was insane. That is what you would expect for your boy. Let somebody—let his own folks with whom he lives, pass upon his condition. Is there any scheme or device in that? I dare you to charge it.

He put his plight in the hands of twelve good men tried and true, so the judgment says, and they said, "We think he is insane and too dangerous to be at large", and the

Court entered an order sending him back to the
1997 State Hospital. Was that a device? Or was that a scheme. Did we know then that Mrs. Stell was going to be kidnapped or taken five years later? Were they building up to a big letdown? Were they five years before the thing happened building up for a big defense? I don't think there is any need to further comment on that.

Proceedings

He stayed in Central State Hospital for eleven months. Now if there had been a scheme or device, in about a month or six weeks, if his father wielded the influence they would have you believe, they would have had him out of there. But they filed away those criminal charges. There was nothing in the books to keep him in there. He was as free as a bird to fly out of there, and they couldn't hold him.

Now was his father in on the scheme? What did his father do? His father immediately went into the County Court and filed a proceeding saying, "My boy is insane, or I believe he is, and let's see whether he is or not."

Now I might tell you right there that the County Courts of Tennessee is the court that usually hears and determines the question of insanity. It is only when criminal charges are involved that the Circuit Court or Criminal Court exercises that privilege. The statutes of Tennessee say that the County Court and the Criminal
1998 Court have co-extensive jurisdiction to determine the sanity of a person, but only the criminal court has that jurisdiction when criminal charges are involved and an insanity defense is asserted.

Therefore, when the criminal charges were cleared out of the picture and he was as free as a bird, his father said, "Let's see about it." And twelve good men again said "We think he is insane and should be put away." His father was appointed his guardian. He gave a \$500.00 bond, and his father put him in Western State Hospital or, rather, the court did, and that is at Bolivar, Tennessee.

Now he didn't want his boy taken back to Central Hospital and I will tell you why. While at Central Hospital he had been in the insane ward. It would have been detrimental to the other inmates and it would have been detrimental to his boy to have taken him back to Central State Hospital because there would have been that friction and they were trying, if they could, to relieve his insane condition and I don't believe you can relieve it by keeping an insane person in the criminal ward.

So they took him to Bolivar, Tennessee. Dr. Cocke was here yesterday. He was the superintendent. His father for

Proceedings

1999 some unknown reason, through pressure from his family or the boy's wife or his mother, or maybe the boy himself, I don't know, went down to Dr. Cocke and said, "I think I will take my boy out of your institution." And Dr. Cocke said, "He isn't ready to go out. He is insane." Of course he typed him as a psychopathic personality, but he was still insane. They were running an insane institution. Dr. Cocke said, "Don't take him out." And Robinson Sr. says, "I am going to take him out, Doctor, over your objection; and I am going to give you a letter relieving you of all responsibility if he should get into any further difficulties," and there is in that record from Bolivar that they read the letter from this boy's father assuming full responsibility for him.

It was a tremendous responsibility. I will grant you, as it turned out to be, and I realize that because that responsibility now is thrust upon me. His father has passed on.

So they took him out of Bolivar, not cured but still insane. He got a job here and he got a job there, and then came to Louisville and worked for the Stoll Oil Company at 2d and Broadway. His services were satisfactory, so far as we know. Mr. Ritchie, the Stoll station manager said his duties there were station attendant and that his duties of course was of filling tanks, and there
2000 was a parking lot in the back, in the rear, to park cars in.

Now I don't believe that he said Mrs. Stoll actually knew him. I think the boy said that she probably knew him or knew him slightly, but that she came there during that period of six weeks and she had seen him on the job. He says it is likely that he knew her. Mrs. Stoll said, "I never saw him before in my life." Whether or not she knew him, that is for you to decide. I didn't know the boy then, and you didn't; and so it is for you to decide in your own minds whether or not they had that mutual recognition or sometimes passed the pleasantries.

Now here is how he looked at that time (showing picture of Robinson). He was a nice-looking boy. He has been through a lot since then. The rock at Alcatraz has

Proceedings

taken its toll. He was a nice looking boy. Don't you think women would be attracted to him, not saying whether Mrs. Stoll was or not. But he was a type that had an appeal for women. Why this copious lady from California said, "Why he just swept me off of my feet; he was 100% with me. Why, I took him around for a week and he just sold me." And there, again, he manifested that super grandiose type and that is why I asked these questions, and I was building up that paranoid dementia praecox type, or rather, she did for me.

2001 There he was in Louisville. After six weeks he left and it was in evidence and Mr. Brown brought it out that the last day he worked for the Stoll Oil Company was July 10, 1931. Now will you bear that date in mind? July 10, 1931.

On July 11th he went to work as a solicitor for the Mutual Life Insurance Company, with offices in the Starks Building as a debit or route man. In August or September, I am not so familiar with the date but I think it was in August, he went to work for the ABC Distributing Company in Chicago. He didn't stay there long. He didn't stay with the Servel Company but one day. They say eleven days, but anyway it was not very long. He was unstable. Not stable, as Dr. Solomon preferred to call it. He went back to Nashville, I believe, and worked for the business college. He was not stable there. Why? There was something deficient in his mind. He was mentally sick. He was not stable.

He got, or tried to get, other jobs. He contracted syphilis along the route and I might tell you that it was after his stay here in Louisville. The records show that it was in 1932 that he received treatment for that. It was after

he had worked here in Louisville, and I want to impress that fact upon you. It was after he had worked for the Stoll Oil Company here at Louisville.

2002 He went to Chicago and worked as a janitor. He worked in South Bend. He tried to get employment and he couldn't get employment anywhere. As he told you, "I got so proficient in the art of applying for jobs that I wrote a book."

Proceedings

Now isn't that a crazy thing to do. A man who couldn't get himself a job was writing a book telling others how to do it. Why, he even did that in Leavenworth. He wrote Mr. Bate at Leavenworth and said, "Why I think I am qualified to write a book on how to help parolees get a job."

Now that was just branding him as a super man or a demented person. I don't know why you introduced that letter, Mr. Brown, because that was just building up for me the dementia praecox with the paranoid tendency.

And he said he wanted to get out and be associated with the very woman who had turned him up. Does a sane man do those kind of things? Run back to the woman that had thrown him into the penitentiary, and we are gonig to talk about that some more. Where is she?

Paranoid, insane, demented—even after he was through this court and said one word, "Guilty."

He couldn't get a job. He came back, I believe the testimony shows, and went to Mr. Stoll and said, "Mr. Stoll, give me another job." And Mr. Stoll said, "No, we have

2003 a policy here that does not permit us to take back persons who voluntarily sever their relationship, so I can't do it."

It is in evidence that following that, Mr. Stoll wrote him a letter of recommendation, highly recommending him. There was no reason, if he had been sane, to believe that Mr. C. C. Stoll was his enemy, but he imagined that every place on earth he went that Mr. Stoll had been there in person or by letter because he had given Mr. Stoll as reference and he imagined these references were coming back from Mr. Stoll unfavorable to him, and what did he do?

He went into action. He is an action bird, so the doctor from the General Hospital says, their witness.

But before that time he told you, and it is not disputed because they know it, that he was the reincarnated spirit of Patrick Henry. Of course he wasn't but he believed that he was, because his middle name was "Henry" and he had read in history what Patrick Henry was. He felt himself an inspiration, as he told you on the witness stand,

Proceedings

and he looks back on it now and can see that he was in a sort of a haze or a daze, to go into action against that fellow whom he thought was doing him, he thought, and that person was Mr. C. C. Stoll.

Now, of course, there are a lot of other things that he did, they are going to say, "Why, that indicated perfect normality—he ate, he slept and went from place to place." But that is no manifestation of a sane man. This paranoid type works on the systematized delusions or one delusion. "Systematized" means fixed ideas or ideas based upon false premise, as Dr. Crice and Dr. Solomon told you—and Dr. Brackin told you what that term meant. It is an idea based upon a false premise. It is systematized. It is always there.

Therefore, Stoll was riding uppermost in his mind, so he decided that it was a patriotic, Patrick Henry, thing to do to go into action against C. C. Stoll and do something about it, and that resulted in this document, the ransom note, being written.

If I had the time I could go through this ransom note and point out to you in minute detail the things in here that brand him as a paranoid type. Let's see what some of them are, just for example.

"Read this letter and we mean business"—in other words, "I am somebody and you have got to listen to me, I am a super-duper," as they say. "We want the money." Now there is a typical example, he was speaking in the plural. "But if you let the police know the details of this letter or where payment of the ransom money is to be made, or if there is any evidence that you mean to double cross us by sending a dummy package or watching the intermediary named in this letter or otherwise trying to set a trap for us, we are prepared"—there is the plural again—"This is no idle threat," and he underscores it.

The planning upon this letter is paranoid manifestations, reducing himself to writing, showing that he was a paranoid type. An action bird. "However the capitalist" and he capitalizes "capitalist" in order to make it stand out to show that capitalists to him—and Stoll, he thought,

Proceedings

was a capitalist—maybe he was, I don't know—was working against him. He thought Mr. Stoll and the capitalists had the Lindbergh Law passed and of course we know Mr. Stoll had nothing to do with it, but that boy in that delusion thought he did. It was an idea based upon a false premise that C. C. Stoll had the Lindbergh Law passed—he called him an octopus. An octopus is one of those mammals with a lot of feelers who will grab you if you don't get out of the way. A dictator. He underscored "octopus" and "dictator."

Then he said he was going to "put Stoll in a vat and put acid on him," and just completely obliterate him. That was a crazy thing. But that idea was certainly in his mind—insane delusion—paranoid type.

Throughout this whole ransom letter he is branded **2006** ed as a dementia praecox. Really, I don't see why they emphasize that letter because when they do they are just emphasizing how crazy he was.

He prepared the letter in Indianapolis. He came to Louisville on October 8th and went to the C. C. Stoll home. You see, he went into action. He was going to carry this stuff out here. He didn't find Mr. Stoll. He used the telephone ruse to get in there. He went next door. Why, I don't know unless he thought Mr. Stoll would be there. He didn't do anything that day but he was an action bird and he goes back.

He goes back on October 10th and he went to see Mr. Kottke and he said, "I know the way out there, I have been out there by way of the River Road but I haven't got my bearings and I want to know the way to get out there, and I want you to direct me how to get out to the Berry Stoll home." Well Mr. Kottke got on the phone and he found out and sent him on his way.

He went out there to Mr. Berry Stoll's home and there—that was about 2:30, I believe. It takes about thirty minutes to go from Bardstown Road out there. And he went out there and encountered the maid. From this point on I am going to assume, for the sake of argument, that there was an unlawful kidnapping; and then I **2007** am coming back and I am going to presume that

Proceedings

there was not an unlawful kidnapping. So let's proceed, then, on the idea that this was an unlawful kidnapping. Now he went there. Now I am going to take the government's side because that is the side that they are going to take and see what happens. He went in there and said, "Your telephone is out of order, let me see it." That gained him entrance. The he said, "Who is on the place?" The maid said, "My husband is away for the day and Mr. Stoll is gone." A perfect set-up for the kidnapping. He says, "Have you got an extension here (and I am still taking the government's view). The maid said, "There is an extension upstairs and Mrs. Stoll is up there and see if you can go up." So she went up. He says, "Go up ahead of me, maid, and get on that extension and see if we can fix it. I believe if you go up there we can fix this thing." The maid says, "He put a gun to my back and instead of going to the bedroom where the extension was he went to the guest room, where Mrs. Stoll was."

He went in and what were the first words said there on that occasion? Mrs. Stoll says, "What are you doing here?" Now does that have some significance? If she had never seen him before I am sure she would have said, "Who are you?" or "What do you want?" But she said, "What are you doing here?" indicating some acquaintance. He then said, "I am here to kidnap you." There was
 2008 some evidence that there was some discussion, she offered him a check and he didn't take it and he carried out his threat.

He bound the maid—there is always a maid, it seems, to these kidnappings. There is always a maid to fit into the picture. He gagged and bound the maid. He put tape over Mrs. Stoll and bound her hands. She was then dressed in just house clothes; she got her coat out of the closet—whether she got her coat out of the closet or whether he got it, that is not material, and she covered her person.

Before that, they tell you, that they got into an argument and he hit her over the head with an iron pipe, and where is your pipe, Mr. Brown. He rapped it on the table the other day and it scared the stenographer to death. Now there is the pipe and I say if he hit her, he was cruel;

Proceedings

hitting a poor, defenseless person—he was either cruel or as crazy as a junebug. He hit her over the head, not once but twice—now I am arguing the government's case. The blood flew all over the earth—all over the room there. The maid said there was a big spot, Mrs. Stoll says it flowed freely, Mr. Marshall Bullitt, the biggest lawyer in these parts, says he saw a spot of blood this big, and another witness said he saw a spot of blood this big, Capt.

Messmer was there and saw the blood, the coast-
2009 guardsman was there and he saw the blood and saw the ransom note that the maid says was pitched on the bed and Berry Stoll said, "I found it on the floor," and how it jumped from the bed to the floor I have never known, but there is a contrariety of testimony. But that is not material now. But where, oh, where are the fingerprints on this pipe? Where are they, Mr. Brown?

There is not a single word of testimony in this case that they lifted a single fingerprint off of that pipe, and I know if I were not stating the facts correctly you would jump up and correct me. Now if you have got any fingerprints, get them or forever hold your peace. Where are the evidences of fingerprints on that pipe? Not a word about it. And who was there? Mr. Messmer, the Captain from Ft. Knox who was in charge here in Louisville; he was a fingerprint expert, he was a ballistic expert, and a chemist, where is the great FBI, Mr. Wynn, any fingerprints on the pipe? No fingerprints on the pipe. Where is the evidence of the blood. You say—all your witnesses say there were two big spots of blood. Mrs. Stoll says, "I bled like a hog." She didn't say "hog," she said profusely. You farmers know how hogs bleed.

Where is that coat with the blood on it, if she were hit with a pipe? Where is that bedspread with those great big saturated spots of blood? I don't know. They
2010 have got the pipe. Where in the world is the chemical tests of the blood, Mr. Brown? Why, you have gone from New York to California, you have gotten fingerprints off of the telephone, you have gotten fingerprints off of the ransom note and your man Knowles said it couldn't have been made by any other person than Thomas

Proceedings

H. Robinson. He didn't say Thomas H. Robinson Jr., and he said it a half a dozen times, Thomas H. Robinson. And there is no tangible evidence that a fingerprint on the ransom note, or this bunch of junk here or anything in the world you have here, came from anything that that boy touched. Mr. Wynn, I am ashamed of the FBI.

Where in the world—they bring a fingerprint expert down here, Mr. Knowles, he sang that stuff out there. He was an expert. Twelve latent fingerprints, four potent fingerprints. We had a specimen of his fingerprints. They had him down there on May 13th when they arrested him, they had a genuine specimen of his fingerprints and they sent all of that stuff to Washington and they had that man come down here and bring all of his contraptions and they proved the fingerprints was that of this boy's father. Why, Mr. Wynn I am ashamed of you, I am ashamed of the FBI.

Where is any evidence of blood. They might get up and say, "Well, that was 9 years ago. The boy plead **2011** guilty; we destroyed it. Why didn't you throw the pipe away then if you destroyed the evidence. If you didn't think you needed it, why didn't you throw the pipe away? They brought a piece of pipe in here that the boy never touched. I have got a little piece of pipe here myself. Why didn't you prove that he hit her with that?"

Mr. Brown: If he had, I would.

Mr. Hogan (Continuing): They didn't prove he ever had his hand on that pipe. Mr. Brown and the FBI fell down completely on the job. Where is the blood? They have got blood experts. They brought a blood expert or a chemical analyst down here from Washington and kept him down here a week and put him on the stand and said,

"Did you make any analysis of that blood?"

"Yes," he said.

"Where was that blood?"

"On the ransom envelope—one of these envelopes, a brown envelope, I believe."

"How big a spot of blood?"

"Oh," he said, "a little spot about that big."

"Did you make a test of that?"

"Yes, sir."

Proceedings

"Was that blood?"

"Yes, sir."

2012 Then they turned him over to me, and I said, "Mr. Chemical Expert, is that human or animal blood?"

And he said, "I can't tell."

They brought a man all the way from Washington down here to—

The Court (Interrupting): I believe that was brought out on direct examination, not cross.

Mr. Brown: It was, Your Honor.

Mr. Hogan (Continuing): Well, it was brought out. They brought a man down here from Washington to tell you about a little bitty spot of blood, and it turned out that he couldn't tell what it was. Now, all they had to do, if there was as much blood as they said there was, to take that bedspread and just wring it out and get a cupful of blood, and then they could have proved whether it was Mrs. Stoll's blood.

Where in the world is the blood? Do you believe that he hit her with that pipe?

And where is the coat she wore, dripping with blood. Saturated with blood, dripping for 24 hours. Where is that coat? I don't know. It is not for me to prove. You were asked upon your voirdire examination that if there existed any reasonable doubt in your mind, you said you would acquit this boy. Now isn't there some doubt?

2013 Now from the aspects of that blood, isn't there some doubt?

Now let's assume that he hit her with this pipe, and there was that blood out there, and Marshall Bullitt went out there and what did he do? One of the biggest lawyers in the State of Kentucky. He goes to New York and spends lots of time—I know because we are in the same building together. He makes big fees—he made \$700,000 fee in one year and the government took 90% of it away from him. He goes out there and he says, "I saw that ransom note and it was in one page." Why, it has got two pages. Mr. Bullitt must be losing his grip. Two great big pages of a typewritten note; and he was the one who took the G-men

Proceedings

out there. He saw one page of the ransom note.

All right, here we go with Mrs. Stoll in the car. She said she was bound and gagged and had a blanket put over her, and I asked her when it was about the time she got to where the bridge might be if the car didn't stop and I believe she said the man said "okay." Then I asked her if she tried to whimper or cry out, and she said no. There was a man on the platform looking right down into that car. If she had have been in distress she could have cried out. That bridge attendant had a big gun on him. If she had cried out that bridge attendant would have said,

"Look, boy, what have you got in there?" But
2014 where is that blanket or laprobe, or anything in that apartment.

They found his car in Springfield, Ohio. They brought that peace officer down here and that tourist home woman. There was no evidence at all of any blanket in that car. Where did that blanket go. Was she covered?

On the way down Market Street, one of my witnesses, and I am not so proud of him, I will admit. I had never seen that boy before. That fellow said, "I saw a fellow that I later knew to be Robinson and when this case was tried and I saw Mrs. Stoll's picture in the paper I recognized her as being the woman I saw with Robinson." Now, as I say, I had never seen that witness before, and I thought the government had me in the box with that witness because they proved he had been arrested for grand larceny and convicted and jailed. But I thought that when they were digging at him that they were going to come in here and prove that he was in jail in October 1934 and if he had been that would have ruined my case, but the only thing they had on him was that he gave two different names on a driver's license, and that he was living with some woman and not married; and that he put a false answer on his questionnaire, and they are here to condemn him about that, and let's see about that. He said he did not fill his

questionnaire out and that it was rather complicated.
2015 He said a friend of his filled it out. I say, when a person puts his name on anything and signs it he is presumed to know what he is doing. I say, don't

Proceedings

ever put your name on anything if you don't want to get in trouble. But they are condemning him for what turned out to be a patriotic thing for him to do. He did not want the government to know that he had been convicted of a felony. If he had wanted to stay out of the army, he would have put it in there in capital letters, "Convicted of felony in the Taylor Circuit Court," and he would have been an unwanted person in the army. You come in here and say he was a big liar and he did this and he did that, the fellow who indirectly tried to get himself into a uniform not because he made a false affidavit but because he did not want to try to stay out of the army. He wanted to get in there where your boy and your nieces and your nephews are.

Does that make him unable to identify persons? I don't know if he was there. He might have been a crank trying to get into this case, but he did come into my office, and I had never seen him before, and I was rather cautious. I put him through the hoops to try to see if he was telling the truth. Of course, I didn't have the investigating facilities that the District Attorney has.

I think you have noticed throughout this trial **2016** the handicaps I have worked under. Here is Tom; there are two Marshals right behind him now. When they take him out of here, he is handcuffed. There we sit—Tom and I. He is no help to me because if I want to use the phone I have to stay in here until 12 o'clock before I can go out. I did have my wife in here helping me but the flu knocked her off. I have been under a tremendous handicap. Just like last night in trying to run down Mr. Carlisle, and they talk about kidnapping! The FBI kidnapped a witness and I directly charge them with that.

Mr. Brown: Well I will say he was subpoenaed and been here like every other witness the last three days. If you will look at the record you will see that Mr. Carlisle has been subpoenaed here just like every other witness, and your accusation is absolutely false.

Mr. Hogan (Continuing): Why didn't you put him on, then? You knew what he would say. Carlisle said, "I was in the FBI office for two days, and I couldn't go anywhere unless they went with me." Mr. Carlisle has not done any-

Proceedings

thing. He has not been arrested for anything. Falsely imprisoning a witness. Suppressing the evidence from you members of the jury of a defendant with his life and liberty at stake. It is the most reprehensible piece of work that I have ever heard of in a court.

The Court: Mr. Hogan, I don't think your **2017** statement that the witness was falsely imprisoned is borne out by the fact at all. I am sorry to have to interrupt you but I can't let a statement like that go unchallenged when there is no evidence to support it.

Mr. Hogan (Continuing): Well, Judge, I will tone that down a little bit and say that he was in the FBI office those two days, and that when he went out an officer or an FBI Agent was with him, and I am sure he did not ask for that protection.

So there we are—no blanket, going to Indianapolis, still proceeding with the government's side of the case.

She got in there and she was so nauseated and so sick as a result of that blow from that pipe that they couldn't connect up, and yet the very first thing on earth she did was to cook some scrambled eggs and ate them and her own cooking made her sick. Sick before she got there, sick from eating scrambled eggs from her own preparation and it made her sick.

There is no evidence from Robinson, and there is no evidence from Mrs. Stoll that he tried to molest her one iota in that apartment. Is there any evidence of any intention of this boy to smear Mrs. Stoll? If he had been on a smear campaign he could have come in here and **2018** told you that they just had all kinds of relations in that apartment. He didn't do that. He is not trying to smear her. As I have told you, I insisted that he tell me the truth, or what he thought to be the truth, before I would let him go into that stuff. I don't like it. But I call your attention to the fact that there must have been some spark of gallantry in him or he could have come in here and told you, "Yes, I had relations with her, she is just lying."

The Court: Mr. Hogan, I don't like to interrupt you, but you have had approximately an hour and a half. I

Proceedings

thought you contemplated using only two hours and if you are we can go on and the jury can remain in the box. However if you are going to go over two hours, possibly two hours and a half, probably we should recess.

Mr. Hogan: I would like to have about an hour longer.

The Court: All right. Members of the Jury, I am sorry to interrupt the argument at this point, but you have been in the box for quite a long while and I think maybe you should get up and walk around and make yourself comfortable for a few minutes.

Don't discuss this matter among yourselves or with anyone or the argument of counsel on either side in this case; the case is not yet over. Let no one come in
2019 contact with you who is interested in this case in any way.

After recess Mr. Hogan continued with the closing argument as follows:

Mr. Hogan: Now I believe that we had arrived at that point in the kidnapping, taking the government's side of the case.

There she was in that apartment. She was not there just a few hours; she was there for seven days—Wednesday night, Thursday, Friday, Saturday, Sunday, Monday, Tuesday—seven. Not all, of course, of the first day or of the last day.

She says she was hurt. Assuming that she was, she says she was never denied access to the bathroom, and that the boy never went in there with her—of course he didn't. There is a view of that bath room. And we simulated it here the other night. The toilet seat, the radiator, the window. Why their own drawing isn't even accurate because it leaves out the radiator, making it easier for her to get up here, and the window has a ledge to it, that would have helped her. Why, it wouldn't have been any trouble on earth for her to have stepped up here and here and right out that window.

Now they tell you she couldn't see out there. That is one of those opaque windows on the bottom. Why,
2020 she is five feet three inches tall. She could have stood on this seat and if she had been any woman at all,

Proceedings

with any curiosity at all, and every woman's got it, she would have taken just a little just a little bitty peep to see what was on the outside.

I asked her if she really wanted to get out of there and I believe if there had been a real honest-to-goodness effort she could have looked out because she had six or seven days of daylight. The water flushed in the bathroom, the bathroom faucets were turned on in the basin and in the tub and she could have carefully raised that window and looked out that window and she could have seen what was going on.

She could have done better than that, and I will tell you why. She could have attracted attention without ever saying a word or looking out the window. How could she do that? I assume there was paper in the toilet and she could have found a pencil in that apartment and she could have gone in their quietly—oh, I know you are going to say he would not have let her take the ink in there, but she could have taken a pencil and written a note on a sheet or two of that toilet paper and when Joe Johnson or those garbage men came to get the garbage and could have held that paper up, stood upon this seat and held this up to this window and made a little noise and all she would
2021 have had only to say on there, "I am Alice Stoll. I am the kidnap victim."

Everybody in Indianapolis knew about that kidnapping because she said herself that Robinson brought the papers in and that they turned the radio on, and everybody in the country knew that there had been a kidnapping.

Did she try to do that? Seven days without an effort!

She said, "If I had tried to raise that window, he would shoot me through the door because he sat right outside there with a gun." Now just look at this picture. Now there is the bath room door. There is one of those thumb locks on it. She admits there was, and if she didn't, Joe Johnson says there was. She could have thrown the bolt and it would have locked him out.

She says, "Well, that wouldn't have done any good." Well let's see about that. This linen closet, or whatever it is, is out of range of anybody sitting back there on the

Proceedings

sofa, and she could have gotten behind that linen closet and been out of range of the gunfire from Tom Robinson, or anybody else. Did she do that? Why, she didn't even clean herself up. She says she came out of there with a mass of blood on her head. What kind of a woman was she? She was in the bath room, and the doctor says all that

he did was to wash the wound with soap and water, **2022** and I want to know why she didn't do it. A woman of social prominence—why she didn't even take a little soap and water and get it off of there, if she was hurt. That is one of the mysteries of this case.

There is that apartment. She says the blinds were all down. The FBI knew all about it,—not, perhaps, where she was, but they had Van Landingham, one of their own Agents, living across the court and if he had been any kind of an FBI man at all he would have smelled a rat. There is something wrong over in that apartment across there and I believe that is where that woman is. Where in the world did Van Landingham go? Where is he? Why didn't he investigate all the shades being down? Can you answer that? I can't.

Let's go back to that window again. Joe Johnson, 169 pound-heavyweight, 20 inches across the shoulders, was brought in here by the government, and I said, "Well, Joe, did you ever go through a window like that?" And he said, "I sure did. Why, they had one tenant in one of those apartments that had a window like that who was always leaving her key in there. I went in that window many a time."

Mrs. Stoll weighs 119 pounds, and is 5 feet three and in order to demonstrate to you that she could have **2023** gone through that window, I had a window prepared; and Mr. Brown said it hasn't got a screen in it, and no lock, and the lady hasn't got on a dress. So I said, "Go home and get a dress on." We brought her in here and she had had infantile paralysis and he thought she was an athlete. That young lady who had had infantile paralysis and skimmed through there and I want to call your attention to the fact that she had to with one hand hold that window up which was a handicap because that

Proceedings

window has got window weights on it and stays up, but in order to be fair we tried it without any window weights; and she removed the screen with one hand held it, and held the window up with the other hand and went through there like a cat. Now if she could do that, why couldn't Mrs. Stoll, if she really wanted to, have gotten out too.

Now she was held there in that apartment that had all kinds of broad windows. She says the shades were down. Why, I say she could have grabbed a shoe or a lamp and thrown it out one of those windows and made the biggest racket in the world—she could have heard somebody going by there and hollowed. He says she used to stay there and he didn't tie her up until she bucked over the traces and after all the publicity came out—she says she had the run of the house.

Now, this morning Mr. Inman said she couldn't
2024 have gotten out of that bathroom but I have just shown you how she could put that note or message up to the window and Joe Johnson said the garbage man comes there at least twice a week, sometimes a colored man and sometimes somebody else, three times a week. Now there were two garbage cans right outside there and another can that they kept slop in for the hogs and another colored man came and got that. Why all in the world she had to do was when she heard those garbage cans rattle was to stand up at the window and made a little noise and got out of there.

Then he was gone for 19 months and the great FBI had to hide behind the skirts of a woman who had turned him up.

Mr. Inman said this morning that she couldn't have gotten out of there, that if she had Robinson would have seen her, but she says that the blinds were all down. If she had gotten out that window Robinson could not have seen her because if her testimony is true, the shades were down. Now there is something inconsistent there.

Well, she didn't get out, and Mrs. Robinson arrived on the morning of the 16th with a package, and I say to you that the government failed miserably on that. Why do I say it? They had that money starting from Louisville.

Proceedings

Johnny Tarrant going to a depot in Louisville and
2025 they got it down to Nashville in a safe and if you follow the evidence, the money is still down in Lackey's office. That is as far as it got, right in his office because the only other thread of evidence is that Frances Robinson, the wife of this defendant, arrived at that apartment with a package.

Mrs. Stoll says that it was ransom money. They never have shown that this boy was given that ransom money. If we assume that the package was ransom money, and we will assume it, that is as far as they got. Now she got there with the package. Now they have got to prove that they had the money in that package. Of course he came along later and said that he got some of the money. They had to make out their case on his testimony. Where is the great FBI again.

Now Mrs. Stoll said that Robinson gave his wife some money, and Mr. Brown says, if I am wrong correct me, on page 524, Mr. Brown said, "Was that ransom money," and she said, "No." And he knew that she had given the wrong answer, or, rather, had given an answer that he didn't want and he asked her again and she said, "No, that was not ransom money. It was money that my people had given her for expenses."

Again they fall miserably down with the testimony.

2026 So Robinson leaves; he is gone. He says he gave her \$25,000. I don't know whether he did or not. That is not important—let's see. Mrs. Stoll said that Robinson left after he came back and that Mrs. Robinson was there with her, and Mrs. Robinson went out and got some beer and some sandwiches. She did not then say or presume to say that she was then prevented from getting out of there or going anywhere because Tom Robinson was gone and Frances was gone to get the beer.

"Well, Mrs. Stoll, did you drink any beer?"

"Only one bottle."

"Didn't you drink two bottles of beer?"

"I don't recall that I ever drank two bottles of beer at one time in my life."

Proceedings

And then I went down and found where she had testified before, and I asked her again, "Didn't you say you ate one sandwich and drank two bottles of beer," and she said, "I guess I did."

I am just calling that to your attention to show whether or not the lady is worthy of belief. Drinking beer and talking about trivial things with Mrs. Robinson, right there in that apartment. Was she hurt? Robinson says that she drank several bottles of beer every day or occasionally.

Maybe she didn't. But if she wasn't so sick or so
2027 hurt—people who are so sick do not indulge daily in beer guzzling.

And where did they go? Mrs. Stoll and Mrs. Robinson started out up the street and went to a drug store. Now Mrs. Robinson wasn't trying to harm her. Where did they go? They got in the drug store and what did they do? Did they buy any medicine or call a doctor? Not a bit of it. They called a taxicab. I asked her, I said,

"Mrs. Stoll did you make any purchases in that drug store?" She said she didn't.

"Did Mrs. Robinson?"

"She didn't."

"Did you call the FBI or the police?"

"No, I thought this woman might have been a confederate."

Now how could she think that when she was sitting in that apartment drinking beer with her, and talking about trivial things.

They went on to the Cleggs, and did they call the police? Not a bit of it. What did they do? They called a preacher, they called Reverend Clegg. He came after a while, and I mean no reflection on him, and he started with them to Louisville.

Meanwhile, Mrs. Stoll had called whom? She didn't call her husband and she knew, or had reason to
2028 know, that the FBI were there at the Stoll home, and did she call her own home? She did not. She called Miss McHenry. And Miss McHenry's testimony is not that she called Berry Stoll's home but that she conveyed the information to the Stolls when she got out there that

Proceedings

night, and she got there at seven o'clock.

And I asked Mrs. Stoll if the reason she did not call the police was in order to let Tom Robinson get a head start and she said no. Why didn't she call the police at the drug store in Indianapolis, and why didn't she call the police or Berry Stoll at the Clegg home?

That is just one of those unexplainable things unless she did feel sorry for this boy and let him get away. The Cleggs were her own people by marriage through her husband, and Frances was her beer-drinking partner. All of these FBI agents went down, they were following Frances' Robinson with the money, but they did not have Frances' interest at heart; they lost Frances—the bloodhound lost its trail. They didn't protect Mrs. Stoll to any degree because she got to Scottsburg before the FBI ever appeared on the scene. She could have been waylaid by this confederate, if she was, but she wasn't.

Then she got on home. It looks like they did a very poor job of controlling or protecting her.

2029 Now the boy is loose. He is gone. Everything he ever did on earth branded him as a paranoid. He went right into New York, the New Yorker Hotel, the Ritz Carlton, the St. George in Brooklyn and the biggest hotels in Los Angeles.

They produced a specimen of his handwriting from the TVA and all in the world that they could have done, with all their expert equipment and training, they could have gone and compared that genuine signature that they had—the first place in the world to look for a boy with \$25,000 we say, they say \$50,000, is a place where he could spend it. All they had to do was to go in there and check the signatures at the hotels. They didn't check a single registry so far as I know; and what did this bird do, this great long criminal record bird here, as they say? Why, he went to the polo grounds with thousands of people witnessing a ball game with his friend from Rye, New York. Does a sane man do that? Or does a criminal man do that? That place was full of policemen, Cribari says. In there but maybe not in uniform. He had no idea in the world that he was wanted. He was living in a cloud, as crazy as a Junebug.

Proceedings

Now that was the most foolish thing on earth, to present himself in a crowd of that sort or register in those hotels.

2030 Was he crazy?

Coming back to the Cleggs, Mrs. Stoll picked up another coat. She had one coat and I don't know why she needed two. When she got here she said she had \$470.00 the FBI had taken off of Mrs. Robinson, yet she said over in that apartment that Tom Robinson had not given Frances Robinson any of the ransom money. There is a big bag in the testimony somewhere. He didn't give her any, and yet she shows up with \$470.00.

Why did she have that extra coat? I don't know. Maybe it was to wrap up this big hunk of money that I asked the maid about being in the chair the next day.

Was Mrs. Stoll sick?

Mr. Connelly was there, Melvin Purvis was there, and another FBI Agent whose name doesn't come to my mind right now was there when Mrs. Stoll was delivered home that night. Head all bruised—bloody head. Yes, and Berry Stoll was there, too.

And Fowler Woollet said that she was so nervous the next day she couldn't write her name; Mr. Berry Stoll said she was a wreck. Woman of wealth. Father Chairman of Board of a lot of institutions here. What did she do that very night? She took a pen and ink or some writing instrument and wrote her signature or, rather, her

2031 initials Alice Speed Stoll 94 times on 94 five-dollar bills.

Could she have been so sick or so hurt. And they are asking you to fry this bird's hide because when he turned her loose she was in a not unharmed condition. A woman whose father has got plenty of money. She comes from that great long line of people—J. P. Speed was her grandfather, and yet they would interest themselves in such little pecuniary details as putting her initials 94 times on 94 five-dollar bills that night after she got home, and they can't deny it. They brought it out.

And what about her condition? Mr. Connelly was there. He was on the stand. Did they presume to tell you that

Proceedings

she was hurt? No. Did Miss McHenry? Yes. Mr. Purvis was there but now he is in North Africa. Agent Kerr was there. Did he tell you about any cut on her head or any bruise on her skull? If he did, I don't remember it. If I misquote the facts, Mr. Brown is right here to correct me.

There is a total lack of evidence except from bias witnesses, her friend Miss McHenry, her husband and the doctor.

Now let's see what the doctor said. He said, "I washed it off with soap and water, put new-skin on there; the cut had healed and grown together. Did he ever
 2032 take any x-rays; if he had been any doctor at all he would have taken some x-rays. Now let's find out about that head. The next thing I knew he had gone out of town and left his patient.

Now what did they do with the Woolets? They did not want anybody there that night. Why, I don't know. They took them and put them in her mother's home on Cherokee Parkway, Mrs. Speed's home.

"Did you want to stay there, Mrs. Woolet?"

"No."

"Did you want to stay there, Mr. Woolet?"

"No, my wife was hysterical."

"Couldn't you have taken her away?"

"I didn't."

And the next morning Mrs. Speed said, "Mrs. Woolet, you and your husband can go back to the Stoll home."

They went back. I asked Mrs. Woolet if Mrs. Stoll didn't embrace her,

"Why, she did not."

"Did you find any money under the pillow?"

"I did not."

"Didn't it disturb you, a great big sum of money with a band around it?"

"I didn't see it."

2033 "Did you consult an attorney or make any claim?"

"No."

Then I went along. "What happened Saturday?" A lot of things happened and it was finally brought out that

Proceedings

she appeared before the Grand Jury on Saturday and went home, and Sunday got fired—she and her husband. They had enough testimony to produce this indictment, and then they fired her the next day.

Did they treat her right? Of course not.

Fowler Woollet said that he spent all of his money. Couldn't get a job. Where he went this thing followed him. He couldn't get a job.

Then on September 9th, just a few weeks before the Robinson Sr. trial and the Frances Robinson trial here in this very court room, Fowler Woollet and Ann Hobbs Woollet go to the office of Joe Hayse, an attorney in this city, and Ann Hobbs Woollet says, "I have never consulted an attorney; I never made those statements in my life and I do not remember it." I wish I had time to pick out—her answers were stereotyped, "I don't know;" "I don't remember;" "I don't recall"—but on direct examination she remembered everything. Well, did she make that statement? Mrs. Woollet, "I don't remember going to his office."

Then I called her husband in, and he said he had consulted Mr. Hayse about a claim and then what happened?

2034 It developed that they got re-employed by the Stolls and Berry Stoll paid Dudley Inman his fee and everything was hunky-dory—they kissed and made up.

Now we can't prove, because that's a gap, that they made up before the trial of Robinson Sr. and Frances Robinson, but there is a circumstance in the chain of testimony that they went on September 9th and made affidavits so they had something in their mind on September 9th, and they didn't go back to work until after the trial.

Was that significant to you?

And then when I confronted Ann Hobbs Woollet with her affidavit and she said that that was her signature, she then said, "Well the relationship of attorney and client existed, and I am going to hide behind that privilege, and yet she denied that she had ever consulted an attorney because if she hadn't have done that I would have made her read her own affidavit about all that money she found—

Proceedings

Mr. Brown (Interrupting): I object to that.

The Court: The affidavit that she made I have already ruled on and it is not admitted in evidence, and the contents of it I don't think you should refer to, Mr. Hogan.

Mr. Hogan (Continuing): All right. I will merely say she said she signed the affidavit and she said
2035 that that was her signature. Under the rules of evidence we can't let it come in. I only wish it were possible to do that in this kind of a suit because I think you gentlemen of the jury, and you Mrs. Elswick, ought to know the truth of what she said.

Mr. Brown: Objection.

The Court: Now I think the objection is well taken, Mr. Hogan. You invoked the rules of evidence when you thought they should be invoked, and I sustained you. And the government invoked them when they thought they should be invoked and I sustained the government. Those rules are formulated and are in existence for the protection of trials and to enable the jury to receive proper evidence. I don't think it is proper for counsel to comment upon the fact that the rules are unfair. You both are using the rules and they have been invoked by the court indiscriminately when he thought they were proper to be used.

Mr. Hogan (Continuing): Well the only thing then is of course the fact that the maid signed that paper. Then—

The Court (Interrupting): While we have been interrupted here, I may say, Mr. Hogan, that you have had two hours and possibly you should designate how much longer you are going to take.

Mr. Hogan: Would you seriously object if I
2036 took forty-five minutes more?

The Court: That will run us into conflict with the evening hour. Suppose we compromise on a half an hour?

Mr. Hogan: Then I have got 30 minutes more?

The Court: Yes.

Mr. Hogan (Continuing): Now we get back to this money proposition. She got back with \$470.00 of the ransom money that she said Tom Robinson didn't give his wife. Mr. Speed said that she got back with \$506.00. Berry

Proceedings

Stoll said she got back with \$470.00, and so did the FBI.

They got Tom out in California, and got some money on him and what does he say they got back from there? Mr. Speed, off his guard, said \$46,000, and Mr. Brown says, "No, you mean \$4600 and something, don't you?"

So we have got this money turned around until I don't think the government itself knows who had it. In other words, who's got the money. She said she didn't have any ransom money and she turned up in Louisville with it. Her father said they got \$50,000 back and she said she brought back \$470.00. Mr. Speed says he got back \$46,000 and Mr. Brown said no you didn't, you got back \$4600 and some-odd dollars.

This is the craziest cock-eyed case about money
2037 I ever saw in my life. Nobody is straight on the money.

Now, was there any kidnapping? That's the government's case in all of its ramifications.

He says, on the other hand, that he went there to get her and she said, "I will go with you." He says on the way over there she was pleasant, that they listened to the radio and read the newspapers and he went out and left her there and if he had been lying—he told you all the time she had the run of the house, and I think you saw his demeanor on the stand and told the truth as he saw it. He was pleasant and tried to answer as correctly as he could.

And he tells you she got a little out of line and he tied her up the last two days. He says he gave her \$25,000. I don't know. I wasn't there. Maybe he did and maybe he didn't. He says he did. He says he didn't hurt her, and she said there was nothing wrong with her, and they did not prove that the pipe was bloody.

And that reminds me of a case in 1926. One of these mysterious kidnapping cases. Aimee Semple McPherson was an evangelist in California. She had a big tabernacle and she was a very popular evangelist. Aimee went away one day and forgot to come back. Gone about a week and here she came in and she had been kidnapped and it turned out that the radio man at the tabernacle was involved in that, and I don't know that that mystery

2038

Proceedings

was ever cleared up.

Now this boy says he didn't kidnap Mrs. Stoll, but if he did I will say that everything he did constituted him as an insane person because no sane man would have done one of the things that he did.

What about California? He was out there. The FBI said they were trying to find him. I believe they could have found him in any hotel because he stayed at the hotels from time to time. And then a woman turns up. She went down and told the FBI—she said to Mr. Bugas, "If I reveal the whereabouts of this fellow will you not follow me?" They evidently assured her that they wouldn't and they didn't evidently. She called at four o'clock, at the appointed hour and said, "If you will go to this number you will find him." They went there and got him.

I asked Mr. Bugas if they didn't make a deal with her, that if she would turn him in that they would take him to an insane asylum, and if they didn't say he was crazy, and he said no, that didn't happen.

I don't know where Jean Breese is. But they brought everything else down here. They brought Mrs. Van Houten down here who said they lived next to her two months in an apartment, and then they asked her to point him out and she looked around and said she didn't see him.

2039 And they brought a man clear from California whose street address was wrong and he couldn't testify.

Where is the woman? Cherchez la femme, find the woman. They have got a picture here. Where is Jean Breese. Are they afraid that if she were brought into this court that I would make her admit that she turned him in because she was afraid of him because he was crazy? Did they arrest her? Did they prosecute her. I haven't heard of it. A great to do was made here because that might not be a federal case but if I know my law it is a federal offense to harbor a fugitive. Did they arrest her? They knew she was with him because she told them she was. Why didn't they bring her into the court room and let her tell you that Tom Robinson was as crazy as a junebug, as I believe she would if put on this stand. In fact, I know she

Proceedings

would.

They brought him back to Louisville; they did not even take him before a United States Commissioner in California. That is a necessity. There was not a word of evidence that he ever signed or waived his extradition papers. They brought him on an airplane; kept him awake all that time. Put him over here in the Starks Building in a cage like a monkey, and didn't at all let him see any lawyer, plying him with questions, wouldn't let him sleep. Mr. Dewey says, "I knew he had been adjudicated insane."

2040 He didn't have a lawyer, and they brought him into this court not on May 12th but not until the afternoon of May 13th, and he was handcuffed. And Mr. Dewey said, "I know something about the Constitution; I went to George Washington University two and a half years."

And I said, "What Department are you connected with?" And he said, "Department of Justice." And I said, "Mr. Dewey, do you think it was justice to treat a man like you treated that man when you were in charge of that office in not allowing him counsel and knowing that he had been insane and that he didn't have or presumably did not have any right to make any decision or to make any plea?"

Well they took him to Atlanta and—after they had threatened him and he had said one word, "Guilty." He had no lawyer, mother was hysterical, his father was in an intoxicated condition. And away he went to Atlanta, Georgia, to the federal prison.

He stayed there long enough to get situated, just long enough to get on his way to Kansas, Leavenworth. There they put the psychiatrists to him and he came in here and I tore him down; and I want to call your attention to the fact that that must have been one of his first psychiatrist cases because he said he was engaged in the practice of psychiatry about eight years, so that must have been one of his first cases. But that is not important.

2041 Then they took him to Alcatraz Island, the torture chamber of America, as Tom says, and he ought to know. The French have a colony that you have probably

Proceedings

read about. It, likewise, is a hell-hole of creation.

What have they done to Tom Robinson Jr? This great FBI? They have brought him into this court, a crazy man and knowing him to be crazy and denying him counsel and let him plead guilty and spent seven years or more behind bars—over six years in that torture chamber of America, that rock out in the Pacific Bay in violation of his constitutional rights of you men and you, Mrs. Elswick. The Department of Justice did that to one of your fellow men.

They are going to say that the thing to do, that a man who had committed a crime, is to punish him—not merely to punish him but to deter others so that others will know that they can't commit crime and get away with it.

Now I want to say to you, how would you feel when your son, if he has the misfortune to come back from this war, or some relative, in a demented condition, his nerves all shattered; and if he should do something that was insane or do some crazy act that the authorities would say that that was not an insane act but was a criminal character act, don't you feel that if your son or your dear one should be treated as this boy has been mistreated, don't you

2042 think that he has been unduly, illegally and unconstitutional²⁰⁴² dealt with? and severely punished at the hands of the Justice Department, and I emphasize "Justice Department"?

And when you go out into your jury room to consider this case, I want you to consider that he has already been punished, and they are now trying to kill him. Is that justice?

I believe and I want you to take this case and tell this Justice Department that they can't do a man that way and get by with it. We are fighting this war to uphold the constitution. It has been kicked about too much, and if our boys are fighting for the kind of treatment that the Justice Department gave Tom Robinson, something ought to be done about it. You, by your verdict, ought to tell this Justice Department that you are not going to have the opportunity if my son or my relative comes back and is insane and does some crazy thing, "You cannot treat him

Proceedings

unconstitutionally and deny him his rights and get by with it because we are not going to stand for it."

That leaves the situation down on the Dixie Highway. Now this boy says, "I took Mrs. Stoll to that place." I regret that it is necessary for me to go into this phase of the case, but the charge here is so serious and the situation is so serious that I feel that it is my duty to to comment upon it.

Now, they say that there were not any cabins down there until October. Well, that's true. They likewise tell you that he left the Stoll employment on July 10th and I asked you to bear that date in mind a few minutes ago.

Now they brought a man in here and he said a man's wife had a baby on July 11th upstairs on that place and that this boy could not have been there. Well he testified, and I have got it marked, that when he took Mrs. Stoll down there, and I don't know whether he did or not but I believe he is telling the truth, that he was still employed at the Stoll Oil Refining Company, and Mr. Brown supplied the date by saying, "Didn't you leave there on July 10th?"

So, with that in mind, he must have gone down there sometime between the first part of June and July 10th.

Now, what did they say? They said there were no cabins there. Now Robinson has never said there were any cabins there. Here is what he said:

"I did meet her downtown in the city one afternoon; I think I was still employed with the Stoll Oil Company at that time." Now he had said just before that he had met her on a previous occasion and so this referred to the second time. And then I think I led you into the error of believing that he went and stayed at a cabin down there.

Mr. Brown: I suggest that the transcript be read without comment.

The Court: Read the transcript and if there is any question—

Mr. Hogan (Continuing): "We drove out the Dixie Highway to a spot that I know as the Beach Grove Tourist Camp." He did not say cabin. I emphasize "camp".

"How did you get out to that camp?" Then he said,

Proceedings

"We drove in a car." Then I said, "What happened at the Beach Grove Cabins?" Now I said "cabins", and I profess I probably led to all this situation. "Is that what you said it was?" And here is his answer: "The Beach Grove Tourist Camp." He did not say "cabins"—I said "cabins". "On one other occasion we went to the Beach Grove Tourist Camp. That was twice we went there."

Now I brought Mr. Carlisle in here to prove that there had been a place down there that had been rented out as a place for tourists and I am as convinced as I am standing here that that is what that boy referred to. He
 2045 didn't say he went up any steps. I didn't ask him that. I did not know anything about the situation down there, and I am sure that you didn't ask him anything about going up steps on cross-examination, and I defy you to find where you did; and I defy you to find where he said he stayed at Beach Grove cabins.

He said further, "About that time I quit the Stoll Oil Company and took a job in the Starks Building with the Mutual Insurance Company of Baltimore. I had a debit which gave me time off in the afternoon to do as I pleased and during one afternoon of that period that I was in Louisville, I would say in the early part of July to the middle, we went over to Indiana, Jeffersonville," and there he did say "cabins", and let's see if he didn't make a distinction about what he said about a camp down there and cabins over in Indiana. He said, describing this place in Indiana:

"It had a store in connection with it, and the main office"—now if he had been trying to cover up do you think he would have been dumb enough or foolish enough to minutely detail the situation over here? because he knew what the government could do—he knew they could check behind him. Look at all this array of stuff that they brought in here.

"They had cottages back there (cottages,
 2046 not camps, but cottages) and we registered there as man and wife and took one of the cottages in the rear and stayed during the course of the afternoon and returned to Louisville and during our stay—" I won't read

Proceedings

the rest of that.

"Was that the last time that you met with her during that month?"

"That was the last time I saw Mrs. Stoll until July. Yes, I left Louisville sometime in July or August of 1931 and went to Chicago.

And here they bring a man by the name of Palmer from Tennessee and he didn't get this thing until some time after July 13th. He said, "The paper was dated July 13th, but I didn't sign it because the man in the bank was somewhere else, and I didn't take over until about the first ten days in August."

Now at that time Tom Robinson was in Chicago at that time trying to get a job with the A.B.C. Distributing Company. Doesn't that clear him of that suspicion?

Now, let's see about Beach Grove. I am hot about that Beach Grove and I don't mind telling you.

The Court: You have five more minutes.

Mr. Hogan (Continuing): They hide Mr. Carlisle. The FBI has him. Now I will tell you why I was late last
2047 night. I went out to try to find him at his place and I found out that they had him here, subpoenaed as a witness and he hadn't come home. And they had his affidavit and I don't mind if you read it and I dare you to read it because it will tell you the truth. I had to get a Deputy Marshal last night after I left this court, and go out there and find him. The government closed their case and they knew something was going on and they had the FBI following me and the deputy marshal—

The Court: Now you are going outside of the record.

Mr. Brown: That is the most untrue statement that's ever been made.

The Court: There is certainly no evidence before this jury of anything like that. You must stay within the record.

Mr. Hogan: All right Your Honor. At any rate, I found Mr. Carlisle. He was so scared that he wouldn't tell me what the facts were; and I had the Marshal subpoena him, and I said "I want the truth; I don't know what you are going to say, but come in here and say it. Let's have it."

Proceedings

And I found out the first time this morning what he knew and that was that he had down there a place where tourists were accommodated; and they bring in a picture here showing by Mrs. Palmer, I believe, I am sure, 2048 showing a sign that was not erected until after the lady took over; and by their own testimony that was in July or August 10th, and this sign shows "Falls City". You know what Falls City is—that's beer. Made right here in Louisville.

Now I know that you know that beer wasn't legalized until after President Roosevelt took office in 1932—he took office and it was not legalized until after that. You remember they had the radio on and everything and everybody was happy. Beer had come back; Roosevelt had put beer back and yet they have got a picture here they claim was erected in 1931 with "Falls City" advertised on it. Does it add up? What do you say about that, Mr. District Attorney. Are you trying to deceive this jury and crucify this defendant? Are you withholding and suppressing Carlisle's evidence because you want to kill him after you crucify him?

And now before I close I want to say this to Mr. Wynn. He has sat here—he is a very nice fellow. He has looked at me and he has stared at me and he reminds me of a setting dog. I have got a Llewellyn setter that I think the world and all of. He is getting kinda old—he is almost nine; he is getting pretty feeble. I know that Wynn knows how to set; I am going to put a tail on him and a leash 2049 and take him down in Marion and Meade and Taylor County and Spencer County and put him out in the field to hunt birds for me when this old bird dog of mine passes on.

I never saw such unjust practices as resorted to in order to gain a conviction. I think you, by your verdict, ought to rise up against that because it could happen to one of you or one of yours.

The Court: You have one more minute.

Mr. Hogan: I say, he is going to get up here and paint this man as a besmircher of character, a smearer of women, but I don't think that anything can undo the dam-

Proceedings

age that they have already unconstitutionally done to him.

I am not to get one dime out of this case, and I don't expect it; but I do expect justice.

Now there sits his dear old mother. Dr. Solomon says he has got tuberculosis. Are you going to kill him by your verdict by recommending the death penalty? Or are you going to kill him in an indirect way by sending him back to prison where he will die of tuberculosis.

I say he has been punished sufficiently.

The Court: We will take a short recess. Do not talk about this case among yourselves or with anyone or permit anyone to discuss it in your presence.

After recess court convened and the following proceedings were had:

2050 The Court: Gentlemen, are you ready for the closing argument?

Mr. Brown: Yes, Your Honor.

The Court: We will have the closing argument for the Government.

Mr. Brown: May it please the Court.

The Court: Mr. Brown.

Mr. Brown: Mrs. Elswick and gentlemen of the jury. I want to thank you for your attention during the two very difficult and tedious weeks. It has been both difficult for you, for the Court, difficult for myself, and also difficult for Mr. Hogan, defense counsel. That is according to our American process of Government, and it is a fair process, and I think we have seen here demonstrated beyond the peradventure of any doubt, the fact that, at least, whether, as charged by Mr. Hogan, we do not succeed, we at least attempted to afford the defendant a fair and impartial trial. We have seen here practiced to the utmost the old dodge that has been often tried, when the law is against you, argue facts, and when the facts are against you, argue the law, when both the law and facts are against you, try everyone else except the defendant. That we have had in this court house for the past two weeks.

I am determined, and it was perfectly obvious to me, at least, that in Mr. Hogan's closing argument he

2051 was attempting to incite Government counsel to go

Proceedings

to a length that no fair minded prosecutor should go—I have no intention of falling into that trap. This record is going to be as free from error as I personally can make it, and you have seen the action of His Honor and he manifests the same intentions. That is my intention up to this point, and it shall continue to be my intention throughout the closing moments of this trial. You have listened for two weeks very patiently, many times through harangues by me and by opposing counsel, and I do not intend to prolong this trial any further.

There is a very simple issue, Mrs. Elswick and Gentlemen of the Jury, and that is, whether this defendant is guilty of the crime charged. If he is guilty, you have a further duty to determine in your mind whether the facts justify a recommendation of the death penalty, and if you do give that recommendation to the court, it is then the court's duty and prerogative to exercise the authority vested in him to determine what should be done with this defendant. When I was qualifying each of you, I asked the question of each of you, "If under the instructions of the court, if the facts as developed from the witness-stand justify it, will you recommend the death penalty?" Each of you said you would. I relied on that as showing no mental reservation on your part, if you feel the facts
2052 as testified to from the witness-stand justify it, not to tie the hands of the court in what he feels should be done to this defendant.

Essentially, the facts are very simple. On October 10th, 1934, Mrs. Stoll was kidnaped after being brutally beaten. She was bound and gagged and thrown in the back of an automobile and taken to an apartment in Indianapolis where she was held for a period of six days. There again she was gagged and bound with wire and locked in a closet. As a result of a ransom note this defendant procured fifty thousand dollars, and for the next nineteen months he traveled his way under many aliases and in many different vehicles of transportation, across the continent at least three times.

In May of 1936, he was apprehended. At the time of his apprehension he had a loaded shotgun, he had two

Proceedings

loaded 25's, he had a loaded 45 revolver, and there was found also in the house a loaded 38 pistol, which to my way of thinking, ladies and gentlemen, shows the intention of this defendant all along to do exactly what he did do.

Now, if the facts as developed are those facts, your duty is clear.

What is the defense, ladies and gentlemen? The defense is a very simple one. First, he did not kidnap anybody. If he did not kidnap anybody, your duty
 2053 is equally clear. You should return a verdict of "Not guilty." He, himself, and his counsel, did not have much confidence in that defense because they wanted to interpose something else, and so, as an added stop gap, they interposed the defense of insanity. That was this defendant's old dodge. This defendant and his counsel apparently have lost almost all their faith in that plea because in the closing argument Mr. Hogan mercifully drew the veil over the testimony of his own expert witnesses and abandoned that theory entirely. He has now adopted the theory that it wasn't a kidnaping, plus the further fact that this defendant has been brutally treated by everyone that he has come in contact with. Also in the closing argument, for the first time, the blame was laid on somebody else. The blame was laid on the banker who loaned \$500.00 on some stolen jewelry. That is the first time the banker has been blamed. We have had the F.B.I. blamed, we have a young woman in Nashville who suffered that grievous experience in 1927, his second wife, Frances Robinson, has been blamed, his father has been blamed. His father is no longer here to defend his reputation. He has been blamed. The F.B.I. has been blamed. I have been blamed. Everyone except the defendant has been blamed, with what this defendant did, and yet his own witnesses at all times in response to my question said this defendant
 2054 knew right from wrong and fully realized the consequences of his own criminal acts.

You heard me mention some days ago, the *modus operandi* of a criminal. It was defined as that method of detecting the perpetrator of a crime by comparing the methods he had used in other crimes. I hope some mem-

Proceedings

ber of this jury is a member of one of the public utility companies, the telephone company, the light company, the gas company. You will realize more fully when I say what a place an honest public servant comes to occupy in the minds of most decent, law-abiding people. He assumed a disguise that was almost bound to get him anywhere he wanted to go. Would you expect the telephone man whose services you come to rely upon, would you suspect a gas and electric man whose services you have come to rely upon, or wouldn't you admit them to your house without question. That, gentlemen, is not an insane act. That is an act of great understanding and shows great knowledge of people.

The defense has shifted every time the facts have gotten too strong for him. They shifted early in the trial when it became apparent that they thought they might have something on a division of the ransom money. Of course, all we have to do is mentally to calculate in our own mind how much Robinson testified to that he spent going back and forth across the country, how much he had given away to members of his own family, to see that that amount
2055 very quickly passes \$25,000.00.

But there is another significant fact in this case, gentlemen, and I waited in vain for Mr. Hogan to mention it. He asked me, "Where is Jean Breece?" I don't know. I'll answer that perfectly frankly, "I don't know." I ask him, "Where is Frances Robinson?" I couldn't put her on the stand. She has been here. I subpoenaed her on his behalf. She has been here for two weeks under subpoena, apparently ready to take the stand. Now, in all the world, ladies and gentlemen, there are only four persons that know exactly what happened in this case from first-hand knowledge. There is Ann Woollet, there is Mrs. Alice Stoll, there is the defendant, Tom Robinson, Jr., and there is his wife, Mrs. Frances Robinson. The Government couldn't put her on for the reason that no woman can be forced to testify to any act that took place during their marital relations. At the time Mrs. Frances Robinson, Jr. delivered the ransom money to this defendant at Indianapolis, they were man and wife. This defendant knows,

Proceedings

and this is the reason why he didn't put her on—this defendant knows that Mrs. Frances Robinson wouldn't countenance for one moment this unholy story of a division of the ransom money. That, ladies and gentlemen, is why Hogan and Robinson, Jr. didn't call Mrs. Frances Robinson to the stand. If they had wanted Jean

2056 Breese, all they would have had to have done was to have asked me to subpoena her for them. Many of his witnesses lived beyond the hundred mile limit and so could not be subpoenaed at the expense of the United States. I realized that this was an important case, important certainly for the Government, and, oh, so important to the defendant, and I decided that I would afford this defendant every opportunity to subpoena any witness that he wanted, and I informed him, and it was done, that any witness this man wanted subpoenaed I, on my own responsibility, would subpoena them and have the United States pay the full charges. So if Jean Breese could have added anything, Mr. Hogan would have asked me to subpoena her and I would have as gladly subpoenaed her as I subpoenaed every other witness that he and his client desired.

Let us discuss the insanity theory first. As I say, Mr. Hogan in his final argument all but abandoned that theory, just being dragged in by the heels at the last moment, but we must discuss it, and I think that the best way to discuss it is just for you to recall in your own mind without my repeating it here, the testimony that has gone from the stand, the methods this man used in obtaining this money, avoiding apprehension until he disposed of all but a small amount. And I think that a very short quotation will recall to your mind how true that statement is.

Our Lord Jesus Christ said, "By their fruits ye
2057 shall know them," and "Does a fig tree bring forth thistles?"—and in this scornful question spoke as an aristocrat of intellect and biologic truth. Apply those sayings, members of the jury, to the acts as shown by this defendant in his own testimony and by the uncontroverted evidence produced by the Government. Very few of the facts that were introduced by the Government have been controverted, very few of them. Recall them to your mind

Proceedings

when you reach your jury room.

Now let us get back to the *modus operandi* theory. The smear campaign. The first chance, the first opportunity, that his own vicious character could come out, was in this marriage to a very young girl in 1927 in Tennessee. I am reading from an exhibit which has been introduced and which is the bill of complaint, which is signed by Thomas H. Robinson, Jr. and Thomas H. Robinson, Sr.:

"On further investigation he (Robinson, Jr.) found that around that date said young woman had had sexual relations with several different men other than Robinson, Jr. From the facts developed and what he already knew, that is the date of the birth of the child and his relation with the young woman, he was forced to the conclusion that the child did not belong to him and that a gross fraud had been practiced upon him by said young woman and her mother and aunt in her presence." A vicious trial
2058 was had, and then the jury returned its verdict.

"Question 1: Is someone other than Thomas H. Robinson, Jr. the father of the child called (and the name)?" The answer of the jury was: "No."

"2. Was the representation made by the young woman, or by her mother or aunt in her presence and with her approval, to Thomas H. Robinson, Jr., after he had been placed under arrest and shortly before the marriage, to the effect that she was a virtuous and chaste girl except for her sexual relation with Thomas H. Robinson, Jr., false and untrue?" The jury answered: "No."

We have the first evidence of a smear campaign. The years rolled by. His character stayed the same; as one or more doctors said, an anti-social person with criminal tendencies and character deficiencies. How true we have seen that to be in this case in the last two weeks. His own witnesses, Dr. Brackin, Mr. Atkinson, says that in their opinion at the times they knew him he knew right from wrong and fully appreciated the consequences of his own deliberate acts.

Let's see what this defense means in this case. He has entered a plea of not guilty for a number of reasons—general defense, insanity is one, there was no kidnaping

Proceedings

is another, in the third place, if there was a kidnaping the victim was returned unharmed. He has gone
2059 further than that. He said he is sane now. So what does that mean, ladies and gentlemen of the jury, if your verdict be "Not Guilty." He walks out of the court room a free man. He is sane now. He has made that claim. The doctors that have examined him said that in their opinion he was sane, and is sane, as of October 11th, 1943. This man walk out a free man to resume whatever acts he desires to resume. On past performance, those acts will not be good. On past performance, the mothers and the fathers of young women are running a terrible risk.

Let us examine a little further. Mr. Hogan has asked that I answer a number of questions. I am not going to do that. They are not necessary. Most of them fall of their own weight, and the others that I can answer and probably should be answered will take too much of my time when I have much more important things to call to the attention of this jury. You are tired, and I am tired, and the responsibility for this case will very, very shortly pass from my shoulders to the Court, and then to you, Mrs. Elswick and gentlemen of the jury, and I pray God that you will be guided in your deliberations for the sake of all of us.

Let us examine here a little further, and then I am going to close. We found in 1934, this man charged with other crimes. We found prior to the time that he jumped out of a window when the sheriff came to arrest
2060 him and he fled to Chicago, that he and his father had had a talk with the District Attorney General. Mr. Atkinson was asked this question: "Mr. Atkinson, directing your attention to a threat to ruin the reputation of those girls, did you have any conversation early in 1934 with Thomas H. Robinson, Jr. in the presence of his father, Thomas H. Robinson, Sr., and I will ask you if Thomas H. Robinson, Jr. did not say in substance that he, Thomas H. Robinson, Jr., was not in the least fearful of any of the three girls prosecuting him since he would testify they had gone voluntarily into his automobile and had gone to the country with him for the purpose of having improper

Proceedings

sexual relationships, and that he would ruin their reputations." The answer from his own witness was: "Yes, sir."

Now let's for a moment consider what Robinson himself said about the time that he left Louisville. I am going to show you what a clever defense it was, what a vicious defense, and how difficult it was for the Government to meet. This defendant is a very smart man, he is a very crafty man, and he developed his defense as the Government put in its case, and he develops it in as clever and intelligent manner as any defendant in the eight long years I have been in this office.

He got on that stand and for the first time testifies to these so-called sexual relations with Mrs. Stoll.

2061 He had to go just far enough, and not too far. He had to paint a picture just vivid enough to implant that idea in the minds of the jury and of the public, and not go so far that he would allow me to discredit him, so he mentions one place, and only one place, that could be identified. That was very clever. And he only mentioned it in such a way that he thought there would be no possibility of attacking him or reaching that story in any way. The only place he mentions is at the Beech Grove tourist camp. He mentions that twice. Then he tells another story of some other place that he vaguely hints at, but doesn't identify absolutely. That was very clever, as I will show you in a minute. He also, on his direct testimony, had testified that he left Louisville sometime in July and August, 1931. That was very clever, and I will show you why. I was going to leave it there. Now, if anything could possibly happen to disprove his theory of the Beech Grove tourist camp in June or July, and I hammered on the fact that he left here in July or August, he knew that all he had to do was shove up the instance a little bit, the Government's hand would be disclosed, and the inference would still be there and be supported by his own word. So I had to be equally careful when I examined that man.

I knew from his other testimony that he knew exactly when he left Louisville, he knew exactly, there

2062 wasn't any question about it. He can recall names and dates and places with a celerity and accuracy that is

Proceedings

amazing to me which placed his entire life under a magnifying glass. I knew he had something in mind by deliberately misstating when he left Louisville. I suspected what it was. I didn't know. And so on cross-examination I couldn't disturb him too much. I couldn't arouse his suspicions too much. He would place this incident at a time and at a place that no power under God's green earth could disprove. And so I had to go just far enough to get him tied down and then attempt to disprove that story. So as his counsel pointed out to you, hoping, I assume, that I would overlook it that Robinson left Louisville in June or July, I asked him on cross-examination, on page 1190 of the transcript: "Now then, Mr. Robinson, I will ask you if immediately after you had been employed by the Stoll Oil Company, you were not employed by the Mutual Life Insurance Company as a Collector from July 11, 1931, to September 12th, 1931." Well, he knew that that much of his previous story had been caught up. He hoped no more of it had been caught up. So he answered, as of course he knew, he would know the dates better than I did: "I think those dates are correct." So we have him in Louisville, which we could prove, and he knew we could prove it, he lied purposely, and I will show you in a **2063** moment, that he was in Louisville only from June 1st, 1931, to September 12th, 1931.

We had this story. It was very clever. We had this story that was the pattern of every prior smear campaign he ever started. I didn't know until the time he took the witness-stand that that story would come out. I suspected it. On prior history, it was bound to come out. He had done it every time that he was charged with crime where he had no other recourse. The only time that he didn't use it was in the robberies of Mrs. Lamb and Mrs. Waggoner, and at that time he escaped into the defense of insanity. Now that was the only time he hadn't used this smear campaign.

I suspected shortly after I began to study this case in September of this year, when I knew that I would have to direct the prosecution again, that that story would be told in one form or another. I only hoped it would be

Proceedings

told in a manner and in a way that it could be disproved. I think the hardest thing I have ever done in my life, and a day that I will always remember, was when I explained to Mrs. Stoll what she would probably have to face. I told her that I didn't know it, but I suspected it. I can see the horror and the disgust and the loathing that came over that little woman's face that night. That had

2064 never occurred to her before. You saw her, "Someone has to do it. I might as well be the one." And so, I put her on that stand. You saw her, how shaken she was. You heard her story. If I have ever heard a truthful story, that was one. I did not know at what moment the attack of smear campaign would start. On cross-examination, I had some indication of it. Mr. Hogan asked, "Did you know this defendant in 1931?" I told her that 1931 would be the time. She said, "No." "Didn't you meet him on the River Road in 1931?" "No," she said, "I did not." They dropped it at that, they didn't dare go into it with her because her indignation would have been such that it would have blasted any story of such kind before any decent jury. So it came out, as I knew it would, in a manner that I knew it would, that would be hard to me, that he would give us just enough so there would be no suspicion cast in the minds of the jury on that, but not enough for us to tie to, and so he glibly, unctiously, told that loathesome story that I knew was untrue on the stand and he just went far enough to give a hint here and a hint there, and he said the Beech Grove tourist camp. That was all we had. We didn't know where the locale would be, whether it would be in Louisville or Indiana, or Ohio, or Tennessee. Out the Dixie Highway, the Beech Grove tourist camp. He mentioned it twice. He gave us no other indication of any place. That is all we had. We

2065 left the court room that night, Monday night. It looked bad. Surely it did. You know it did. Fifty per cent of the people won't believe a woman though she is a good woman. It will have to be disproved in such a way that there will be no doubt this man was lying. So we went back to my office. We had very little to go on, and I prayed God that our feet be swift and our minds keen

Proceedings

and our hearts strong, because unless we could break that story down before the time that it came to submit this case to the jury, a good woman's reputation would have been forever blasted. Oh, but Robinson was clever. We found that out quickly. We found his counsel had been out there checking—it is safe to use the Beech Grove tourist camp, the Government has taken it over, the Beech Grove camp is no more. It had to be placed in 1941. That's the only time he was here in Louisville long enough to persuade anybody that any such vile act could occur. The Beech Grove tourist camp is gone.

We found a man named Allen and some people named Palmer operated that place. They are not around here any more. It is safe to use that. We found that out that dreadful night, that the people named Allen and some people named Palmer had operated the Beechwood Inn in May, June, July, August and September, and some people had operated that and changed the name to the Beech Grove tourist camp. We were stymied how to find a person
2066 named Allen, how to find some people named Palmer.

When there was, oh, so little time left. So we started out all that night to work, and we finally found some people named Palmer had operated a tourist camp in Nashville. We checked there and found they lived in Atlanta. We found a man named Allen that had operated it now lives somewhere in the Portland Avenue section of Louisville. That's all we had to go on. A good woman's reputation opens all doors. When we explained what we were up against to the people interviewed, we found a response that to me was simply amazing. On the telephone, I had no power to bring Mr. and Mrs. Palmer up here from Atlanta, over the telephone, no power at all. They were busy people, they were people of affairs, they had their own business in Atlanta, and here I, some person they had never heard of before, when the F.B.I. had finally located them, on the telephone, asking that they come, "I can't, Mr. Brown. We are busy." "You must come. It will help save a good woman's reputation." These people asked no more. They said, "We will come. We will come on the first train, and we will stay there, if we can save that woman." And

Proceedings

so we found the camp known as the Beech Grove tourist camp was not even in existence at the time this vile story was told.

I am going to close now and leave you one thing:

“And he that stealeth a man and selleth him or if
2067 he be found in his hands, he shall surely be trodden down.” And I say to you, Mrs. Elswick and gentlemen of the jury, that the same benificent, merciful God that guarded Mrs. Stoll during those six horrible days at Indianapolis, guided the steps of the Federal Bureau of Investigation and myself to disprove that charge.

Thank you.

The Court: Members of the jury, you have had a long day today, in hearing the arguments of counsel. We would like, of course, to close this case up tonight if we can, one way or the other. However, at this hour, I believe it would be inadvisable for me to attempt to give you the instructions and to start you upon your deliberations as they will be somewhat lengthy, not nearly as lengthy, though, as the arguments you have listened to. I think it would probably be advisable, if it meets with your approval, that we adopt the procedure we have had on other occasions, to adjourn at the present time, let you go home, clean up and refresh yourselves and have your supper, return here at 7:30, and let you have the evening for the instructions and for your deliberations under conditions that will enable you to give due consideration to everything that has been brought to your attention and will be brought to your attention.

Accordingly, I will repeat my admonition to you,
2068 not to discuss the matter among yourselves or with anyone, or permit anybody to talk about it to you or in your presence, also the added instruction this last time, not to eat too much nor to indulge too much so as to take any chance of getting sick or ill.

We will adjourn then, until 7:30 p. m.

An adjournment was taken to 7:30 p. m. of the same day, at which time court convened and the following proceedings were had:

Proceedings

INSTRUCTIONS

By the Court: Members of the jury, you have been engaged in the trial of this case for the last two weeks, and you have given your time exclusively to that duty, for which I want to thank you before we say anything else. As I told you when you were first called here, it is the duty of every citizen to perform certain of the obligations that he would be called upon to perform by the community in which he lives, and while I realized it would be a hardship and be quite inconvenient for some of you to stay here in the city, to be confined or sequestered, as we call it, during the course of this trial, yet I am very pleased that all of you have been able to do so and cooperated so nicely with

the court and with the attorneys, and have listened **2069** so attentively to the evidence and to the argument as it has gone on in this case. I am sorry that we had to lose one of the members that we started with, and I am glad that no ill effects have occurred to any of the others of you, although I must confess that we did have one or two small scares a few days ago. However, you all seem to be in good shape at the present time. You have had a short rest from the afternoon recess, and I know that you can give your attention to me now as I give you the law which is applicable in this case.

I will start out by saying, as you probably all know, that the jury in our jurisprudence is the trier of the facts. In cases where we have a jury trial, we have disputed facts, and it is the province of the jury to decide what the true facts are, what the real facts are, from all the evidence which they have heard, and then to apply the law as the court gives it to you, to those facts as you have decided them, and with that double purpose, deciding the facts and applying the law, you reach your verdict in the particular case which you are considering.

Now in addition to the evidence which you have heard in this case, there have at times been certain exchanges between counsel, certain remarks which they have made, certain remarks which the court may have made, and also we have had the argument by two counsel for

Proceedings

2070 the Government and one counsel for the defendant.

You will hear certain remarks by the court in these closing instructions. I might tell you to start with that the argument of counsel, any comments that the court might make, are for the purpose of assisting you in reaching a just verdict for the purpose of calling to your attention pertinent facts which they think should be called to your attention. Such argument is not evidence in the case. It is merely to present the facts which the evidence have brought out to your attention, and you will not consider the argument as evidence, but as an aid to help you in reaching a just and proper decision in the case.

I might say also, as it has also been brought to your attention, the Government in this case is represented by the District Attorney of this District, the United States District Attorney, and by his assistant. That fact, however, does not give any added weight to their argument, other than what would be to the argument itself, and due to the fact that the defendant in this case filed his affidavit, said that he was unable to employ counsel, the court has employed counsel for him—the court has appointed counsel for him, who has represented him in the trial of this case.

The indictment in this case, which consists of two counts, charges in the second count, which is the only count **2071** with which you are concerned, generally, that on or about the 10th of October, 1934, in Jefferson County, Kentucky, Thomas Henry Robinson, Jr. did unlawfully transport in interstate commerce from Louisville, Kentucky, to Indianapolis, Indiana, Mrs. Alice Stoll, not a minor and not transported by her parents, who had been unlawfully seized, kidnapped, abducted and carried away from her home by the said Robinson, Jr. and held the said Mrs. Alice Stoll for ransom or reward, and the said Robinson, Jr. then and there, while Mrs. Alice Stoll was in his custody, did beat, injure and harm her and did not liberate her unharmed.

The defendant has entered a plea of "not guilty" to that count of the indictment, and it is upon that count of the indictment and the plea of not guilty that you are trying in this case.

Proceedings

It is necessary first for me to give to you the federal statute which controls this case and which is applicable to the case. It provides, leaving out some immaterial portions that:

“Whoever shall knowingly transport or cause to be transported in interstate commerce, any person who shall have been unlawfully seized, confined, inveigled, decoyed, kidnaped, abducted, or carried away by any means whatsoever and held for ransom or reward or otherwise, except in the case of a minor, 2072 by a parent thereof, shall, upon conviction, be punished, first, by death if the verdict of the jury shall so recommend, provided that the sentence of death shall not be imposed by the court if, prior to its imposition, the kidnaped person had been liberated unharmed, or, second, if the death penalty shall not apply nor be imposed the convicted person shall be punished by imprisonment in the penitentiary for such term of years as the court in its discretion shall determine.”

You will notice, therefore, that the offense charges in this case under this section of the Federal Statutes is not the offense of kidnaping. Kidnaping is a state offense. The offense here is for transporting in interstate commerce a person who had been kidnaped and held for ransom; in other words, there is more involved in this case than merely the kidnaping. It is the transportation of a kidnaped person in interstate commerce.

Now the phrase, “in interstate commerce,” means from a point in one state to a point in another state, and as applied to the facts of this case and as charged in this case, it is charged that the transportation occurred from Louisville, Kentucky, to Indianapolis, Indiana, and if such a transportation occurred that is interstate commerce.

So we see that the charge then, or the elements 2073 then, are that there must be the transportation from a point in one state to a point in another state of a person who has been kidnaped and held for ransom or reward.

Proceedings

The statute requires, in order for the offense to be committed, that the person transported in interstate commerce shall have been unlawfully seized, kidnaped or carried away by any means whatsoever and held for ransom or reward. This means that the seizure, kidnaping or carrying away referred to must have taken place prior to the transportation from one state to another of the person so seized, kidnaped or carried away. If the person so transported accompanies the alleged kidnaper voluntarily from one state to the other, the offense charged has not been committed, even though the defendant unlawfully seizes, confines, or kidnaps the transported person after the transportation has been completed. The phrase "kidnaped," as used in the statute, is one of common law meaning. At common law kidnaping is "the forcible abduction and carrying away of a man, woman or child from their own country and sending them to another." It involves the element of seizing the victim by force or fraud and against her will, and unless such element exists the act of kidnaping has not been committed. The statute also requires, as pointed out above, that in addition to the victim being seized, kidnaped, or carried away it is necessary that she be held for ransom

2074 or reward prior to the act of transportation. The phrase "ransom or reward" is used in its ordinary sense as meaning the money, price or consideration paid or demanded for the release of a captured person. The statute also provides that it does not apply, and criminal liability does not exist if the transportation in question is of a minor by a parent thereof. Accordingly, there must be evidence of substantial value in this case that Alice Speed Stoll was held for ransom or reward and while so held was transported, taken or carried away in interstate commerce, and that she was not a child of Thomas Henry Robinson, Jr.

On that last point, I believe the evidence showed that Alice Stoll was thirty-seven years of age at the time of this trial, and Thomas Robinson, Jr. was thirty-six years of age at the time of this trial, and that Mrs. Alice Stoll was the daughter of William Speed.

The defendant is entitled to have the benefit of all the

Proceedings

principles of law and the rules of practice and evidence which are designed to safeguard life and liberty. Among those principles and rules we have the following:

In order for you to return a verdict of guilty in this case, it is necessary that the Government prove by competent evidence beyond a reasonable doubt all of the facts

which constitute the commission of the alleged offense. The defendant is entitled to the presumption,

at the start of the case, which always exists in every criminal case, that he is innocent of the offense charged and that presumption continues throughout the case until and unless it is overcome beyond a reasonable doubt by the evidence presented to you. The return of the indictment in this case against the defendant is merely the charge on the part of the Government that the defendant committed the offense therein set out. It is not any evidence whatsoever of his guilt, and you should not consider it as such. His plea of not guilty to that charge denies the existence of each of the necessary elements going to make up the offense therein charged. The burden of proof is therefore upon the Government to prove by competent evidence beyond reasonable doubt that all and each of such elements exist. A failure on the part of the Government to so prove any one of the necessary facts in the commission of the alleged offense would require that you return a verdict of not guilty. By a reasonable doubt is not meant a possible doubt, but such a doubt arising from the evidence, or from the lack of evidence, that leaves the minds of the jury in such a state that they cannot say, after having reviewed all the evidence, that they have an abiding conviction, to a moral certainty, of the guilt of the accused. It is a doubt

founded in reason, one that appeals to reason. It is not an imaginary doubt, nor is it a fanciful, captious or speculative doubt; nor does it mean a doubt born of reluctance on the part of the jury to perform an unpleasant duty, or a doubt arising out of sympathy for a defendant, or out of anything other than a fair and impartial consideration of the evidence presented. If, after having given such consideration to the evidence in this case there remains such a reasonable doubt in your minds as to the

Proceedings

guilt of this defendant, then your verdict should be not guilty; but if, after such a consideration of all the evidence presented in this case, you have no such doubt as to the defendant's guilt then your verdict will be one of guilty. If the facts as proven are as consistent with the innocence as they are of guilt, or if the proven facts are consistent with innocence, your verdict should be not guilty. The jury is the sole judge of the facts in this case. While the federal law permits the court to make fair comment upon the evidence in the case, and to review the evidence in the case, you are instructed that such comment either during the trial or during these instructions, and such review of the evidence is in no sense binding on you in your deliberations as to the truth of the questions of fact involved in this case. In any review or analysis of the evidence which I may make it is for the sole purpose of attempting to aid you in your deliberations and in pointing out
2077 to you particular bits of evidence which I think you should not overlook, and any statements of fact made by me in so doing, and any opinion or comment which I may make upon the evidence, can be entirely disregarded by you if in your opinion it is different from what you remember the evidence to be or from your view of what its effect is. Always keep in mind that you, the jury, are the sole and exclusive judges of the facts involved in this case.

In addition to being the sole judges of the facts, you are likewise the sole judges of the credibility of each witness who has testified. It is for you to determine the weight or the credit to be attached to the testimony of any witness. You do not have to accept the testimony of any witness at its face value, or at all, if, in your opinion, you think it is partially or entirely untrue and should be so discounted or disbelieved. In passing upon the credibility of each witness you will take into consideration the manner and demeanor of the witness upon the witness-stand, his interest or lack of interest in the result of the case, any prejudice or bias in favor of one side or the other that might exist, whether or not he has a purpose or interest to serve which might color his testimony; the opportunity of the witness for knowing the facts about which he has

. Proceedings

testified; the probability or improbability of his testimony; the consistence or inconsistency of his statements; whether or not the particular witness under
2078 consideration has at some other time made another statement or done an act contradictory either in whole or in part of the testimony of such witness given in this case. If you believe that any witness intentionally made a false statement in such witness' testimony to you, or that any part of such testimony is false, you may, in your judgment, disregard such testimony and disregard or properly discount all of the testimony of such witness. From all the circumstances detailed by the witnesses, determine where the truth in this case lies.

In this case the Government spent considerable time and introduced many witnesses in proving to you a number of the facts in this case. I do not believe that it is necessary to review in detail much of that evidence because when the defendant Robinson took the witness-stand many of the facts previously proven by the Government's witnesses or many of the facts towards which the evidence was directed, was admitted by the defendant Robinson. In fact, so much of the facts in this case have been either admitted by one side or the other, that there are only a few of the issues which are really left for your consideration.

As I pointed out to you, the statute requires that the person be first kidnaped, abducted or carried away
2079 and held for ransom or reward and such person be transported in interstate commerce. The defendant Robinson in his testimony has admitted to the jury that he transported Mrs. Alice Stoll from Louisville, Kentucky, to Indianapolis, Indiana. Accordingly, the question of transportation in interstate commerce is no longer an issue in this case, but the defendant Robinson claims that such transportation was not unlawful and that Alice Stoll went with him voluntarily; in other words, it was not the transportation of a kidnaped person, but it was the transportation of someone who went with him voluntarily. As I have explained the law to you, if this transportation was not an unlawful one, or if Alice Stoll went with him willingly, the

Proceedings

offense alleged in this indictment has not been committed and your verdict would be not guilty. On the other hand, the Government claims and its evidence has been directed to the contention that the transportation followed a forcible seizure and abduction, and that Alice Stoll did not go with the defendant voluntarily. This presents a direct issue of fact for your decision on which, as I have said, you are the sole judge. That is one of the real questions in the case which you have to decide, whether or not this transportation of Alice Stoll was against her consent after she had been kidnaped or seized or whether it was a voluntary accompaniment by her with the defendant.

2080 Two witnesses, Mrs. Alice Stoll herself, and the maid Ann Woolet, testified about the forced abduction in the Stoll home from the guest room on the second floor, at the point of a pistol and following two blows on the head of Mrs. Stoll with an iron pipe by the defendant Robinson. Several witnesses testified about her physical condition upon her return, including a Louisville doctor, Dr. Frazier, who testified about a cut on her head, a bump on her head, sores, abrasions on her lips and marks on her wrists. A number of witnesses, Alice Stoll, the maid, Berry Stoll, William Marshall Bullitt, Elizabeth McHenry, and possibly others, have testified as to the blood stains on the bed in the guest room from which Alice Stoll left. Others, including federal and state enforcement officers, testified about the telephone wires in the Berry Stoll home being cut, the finding of the iron pipe in the guest room and the finding of the ransom note which the defendant has admitted that he wrote.

Opposed to this testimony on the part of the Government is Robinson's own testimony that she was not taken against her will, but went voluntarily because of their friendship and because of the scheme between them to collect and divide equally the ransom money of \$50,000.00. Also the testimony of Alvin Kirtley, who also went under the name of Harry Colvin, a taxicab driver, that he

2081 saw a woman whom he later recognized as Alice Stoll from her picture in the newspaper some several years later, sitting in the front seat, in a car which was being

Proceedings

driven by the defendant, indicating, of course, by that, that she was going voluntarily. Kirtley's credibility as a witness was attacked by the Government. It was pointed out that he used an alias, and on a number of occasions had used first one name and then the other in applying for operator's licenses, also that he had been previously convicted of a felony, and as I believe I told you, but which is proper to be repeated at this time, the law says that when a witness—it is shown about a witness that he has been previously convicted of a felony, that is something for the jury to consider in determining what credibility you will give to that witness' testimony and whether or not you believe it worthy of belief in the case which you are hearing. It was also attacked on the ground that Kirtley did not report the matter to the police or any enforcement officers, although the case was one of wide notoriety.

Robinson's own testimony in support of his contention of visits to the Beech Grove tourist camp on the Dixie Highway in June and July of 1931, is given in support of his contention in this case. After that I believe the evidence was to the effect that he went to Chicago about the 1st of August, 1931, and then to Nashville. The

2082 Government offered in evidence in rebuttal, that the Beech Grove tourist camp on the Dixie Highway, they did not start to build the cabins on that until the last part of August, 1931, and the first occupants in any of those cabins was on October 12th, 1931, which was after Robinson had gone from Louisville and to Chicago. This testimony was through the witnesses, Mr. and Mrs. E. S. Palmer, I believe, of Atlanta, Georgia, and by the West Point Brick Company which supplied some of the brick or all of the brick for the building of those cabins. Robinson's testimony to the contrary was that he did not necessarily say that he lived in a tourist cabin, but that there were rooms—two rooms available over a garage which was in the yard at all times.

Outside of this conflicting testimony which I have reviewed to you, there is a written document in evidence which I think should be considered by you and which was passed over somewhat lightly by the various attorneys in

Proceedings

this case, at least in their arguments, and I refer to the typewritten letter which was written and sent to the intermediary which Robinson admitted writing, and which starts with the sentence, "I am the kidnaper of Alice Stoll" and added that she had only a slight cut which was partially healed. I call your attention to the fact that in order for a cut to be partially healed, it must have been inflicted prior

thereto, and to the statement in this letter that the
2083 writer said, "I am the kidnaper of Alice Stoll."

On this disputed question of fact, the evidence in my opinion is overwhelmingly in favor of the Government's contention that the transportation from Louisville, Kentucky, to Indianapolis, Indiana, was unlawful and against the will of Alice Stoll. However, as I have said previously, any such opinion on my part is not in any way binding upon you, and you are the sole and exclusive judge of the facts in this case, including this particular issue.

The other defense relied upon by the defendant Robinson in this case is, generally speaking, the defense of insanity. Just what constitutes insanity so as to excuse a person for acts which would otherwise be criminal will be given to you in more detail shortly, but first let me discuss with you generally the nature of such a defense and what part it plays in a criminal trial.

One who violates the provisions of a criminal statute is not guilty of the offense denounced by that statute unless at the time of the doing of the act he had sufficient mind to comprehend the criminality or the right or wrong of such an act. In order to constitute a crime, a person must have intelligence and capacity enough to have a criminal intent and purpose, and if his reason and mental powers are either so deficient that he has no will, no conscience, or controlling mental power, or if so through the
2084 overwhelming violence of mental disease his intellectual power is for the time obliterated, he is not a responsible moral agent and is not punishable for criminal acts.

Upon whom then, must rest the burden of proving that the accused belongs to a class capable of committing crime. On principle it must rest upon those who affirm that he

Proceedings

has committed the crime for which he is indicted. That burden is not fully discharged until guilt is made to appear from all the evidence in the case. The law presumes in the first instance that everyone charged with crime is sane, and thus supplies in the first instance the required proof of capacity to commit crime. It authorizes the jury to assume at the outset that the accused is criminally responsible for his acts, but that is not a conclusive presumption which the law forbids to be overthrown or impaired by opposing proof. It is a disputable, or, as it is often designated, a rebuttable presumption resulting from the connection ordinarily existing between certain facts, a presumption that is liable to be overcome or to be so far impaired in a particular case that it cannot be safely or properly made the basis of action in that case. The initial presumption of sanity in this case was rebutted and overthrown by the evidence of the defendant, showing that the defendant was on June 27th, 1929, adjudicated insane by

the Circuit Court of Davidson County, Tennessee, 2085 and on May 7th, 1930, was found to be of unsound mind and his father appointed his guardian by reason thereof by the County Court of Davidson County, Tennessee. This not only overthrew the initial presumption of sanity which I have referred to, but created at that time a presumption of insanity which presumption continues until the contrary is proven by the Government by competent evidence beyond a reasonable doubt. Time alone does not in itself eradicate such presumption of insanity; but it does not necessarily follow that because a person has been adjudicated insane he will continue to be insane or of unsound mind forever thereafter. Such a person may have lucid or rational intervals, or after a lapse of time completely recover his sanity. In fact, in this case, the defendant himself claims to have been restored to a sane mental condition about the year 1940. There has been no judicial finding that the defendant has been restored to sanity, but it is not necessary in order for a person to be criminally responsible for his acts that there be a formal judicial finding by a court that the person has been restored to sanity. Such a recovery may be had with-

Proceedings

out judicial proceedings, and if, in fact, it has occurred, at or prior to the commission of the alleged offense, the defendant is not excused from criminal responsibility for his acts by reason of such prior insanity. Although the
 2086 defendant claims that he was not restored to sanity until about 1940 and was accordingly insane on October 10th, 1934, the date of the alleged offense herein, the Government claims that any insanity on the part of the defendant had completely disappeared by October 10th, 1934, and at the time of the alleged offense the defendant was sane and criminally responsible for his acts.

This raises a direct issue of fact, ~~another~~ issue of fact, which this jury must decide. Keep in mind that the time to which you must direct your attention as to this issue of sanity is the date of October 10th, 1934, as it is the legal capacity of the defendant to commit a crime on that particular day, not before or afterwards, that is the vital question on this phase of the case. ~~Although~~ you can, of course, consider the acts of the defendant which are in evidence both before and after that day, in so far as they bear upon this issue before you.

Upon whom is the burden of proof on this issue? The burden of proof, as those words are understood in criminal law, is never upon the accused to establish his innocence or to disprove the facts necessary to establish the crime for which he is indicted, or where a defense of insanity is relied upon to prove the fact of insanity beyond a reasonable doubt. The burden of proof is on the prosecution from the beginning to the end of the trial, and ap-
 2087 plies to every element necessary to constitute the crime, including the element of sanity. Where the defense is insanity, the vital question from the time a plea of not guilty is entered until the return of the verdict, is whether upon all the evidence, by whatever side is adduced, guilt is established beyond a reasonable doubt. If the whole evidence does not exclude beyond reasonable doubt the hypothesis of insanity, the accused is entitled to acquittal of the specific offense charged.

With those general principles in mind, I will now point out to you more definitely just what constitutes insanity,

Proceedings

which will relieve a defendant from criminal responsibility. The term insanity as used in this defense means such a perverted and deranged condition of the mental and moral faculties as to render a person incapable of distinguishing between right and wrong, or unconscious at the time of the nature of the act he has committed, or where, though conscious of it and able to distinguish between right and wrong and know that the act is wrong, yet his will, by which I mean the governing power of his mind, has been otherwise than voluntarily so completely destroyed that his actions are not subject to it but are beyond his control.

The terms sane and insane, as we have heard them here in this trial, are somewhat general terms. We have had a discussion by experts dealing with psychosis, 2088 dementia praecox, dementia praecox paranoid type, and psychopathic personality, and other mental defects. This discussion has been helpful, but in the decision on this defense, generally known as insanity, we do not rely upon such general expressions. The real question is, was he on October 10th, 1934, mentally capable of committing a criminal act. In deciding that question you will use the test I have given you just a few minutes ago, and not the general terms of sane or insane. Let me refer back to that test or definition, what you want to determine is whether or not this defendant at that time had such a perverted and deranged condition of the mental and moral faculties as to render him incapable of distinguishing between right and wrong or unconscious at the time of the nature of the act he was committing, or where, though conscious of it, and able to distinguish between right and wrong, and to know that the act was wrong, yet his will, by that I mean the governing power of his mind, had been otherwise than voluntarily so completely destroyed that his actions were not subject to it but were beyond his control.

One of the defendant's expert witnesses testified, I believe, that in his opinion Robinson knew right from wrong. I believe all seven of the Government's expert witnesses gave the same opinion. And as I recall, the de-

Proceedings

fense counsel in his closing argument conceded that Robinson at the time of the alleged offense here knew right
2089 from wrong, but the contention is made on behalf of the defendant that the evidence shows that the governing power of Robinson's mind had been so completely destroyed that his actions were not subject to it but were beyond his control. The three expert witnesses for the defendant gave such an opinion, although Dr. Crice's testimony was contradictory and somewhat confused, at least to the court, on this particular point. Those three witnesses for the defendant were, as you remember, Drs. H. B. Brackin, Thomas J. Crice and Leon L. Solomon.

For the Government—Dr. E. W. Cocke of Memphis, Dr. Dennis E. Singleton, the physician at the Leavenworth Penitentiary and Dr. R. M. Richey, physician at Alcatraz Penitentiary, testified that Robinson had no mental illness at the time that each one of those physicians examined him, Dr. Cocke, I believe, on August 24th, 1930, Dr. Singleton on June 19th, 1936, and Dr. Richey on July, 1939, three examinations covering a period from 1930 to 1939 which straddle, you might say, the particular date involved in this case of October 10th, 1934. All three of those physicians testified Robinson had no mental illness at those respective times.

The evidence showed on Robinson's behalf that he was adjudicated insane by the Criminal Court of Davidson County, Tennessee, and admitted to the Central
2090 State Hospital on or about June 27th, 1929, and that after the criminal charges were nolle prossed he was released about May 25th, 1930, transferred to the Western State Hospital on that date, at which time he was released on August 24th, 1930, the doctor in that particular case testifying that in his opinion he was not insane at that time and they had no legal right to hold him, although he thought he should be held there as he was a menace to society.

For the Government, the four expert medical witnesses, Dr. Edward E. Landis, Dr. Isham Kimbell, Dr. Spafford Ackerly and Dr. W. E. Gardner, testified that Robinson knew right from wrong as of October 10th, 1934, and on

Proceedings

that day that his will, the governing power of his mind, was not so destroyed as to make his actions beyond his control.

There is a conflict of opinion then between medical experts, and it is necessary for you in considering the evidence in this case to determine the credibility that you will give to the different medical experts who have testified in this case, determining in your own opinion which ones, or which one or more of them, you feel are entitled to the most belief in this case, taking into consideration their training, their experience and the reasons which they may give you for the opinions which they have given you in this case.

I believe it is proper at this point to touch on one thing which occurred in the evidence last night. I
2091 believe both Dr. Solomon and Dr. Crice made some mention, probably it was the night before last, that they were members of the Jefferson County Lunacy Commission. At that time the court questioned them quite at length as to just what they meant because the court was not familiar with any such lunacy commission. In the interval between that time and this time, I have looked at the Kentucky Statutes and I have been unable to find any such Kentucky Lunacy Commission as such witnesses referred to, but if any such commission exists I will, of course, be glad to have it called to my attention and to so advise you. The Kentucky law in that case seems to be that the court does appoint medical men, doctors, to examine a person who is charged with being insane, but the appointment appears to be a specific appointment for each individual case. It may be that there is some practice to appoint the same man successively over a period of time, but I do not find in the Kentucky Statutes any such board known as the Jefferson County Lunacy Commission or any state lunacy commission. However, the evidence on the question of sanity or insanity is not limited to the opinion of medical men or these so-called expert witnesses. Such testimony is valuable, should be considered by you, as they are men who are trained in mental diseases and usually know whereof they speak. But in addition to such tes-

Proceedings

2092 timony, you should consider all of the acts of this defendant, both within a reasonable time before and a reasonable time after the date of the alleged offense, which, as I repeat, is October 10th, 1934, in this particular case, which have a bearing on that issue. I say those acts should be considered by you in passing upon this question. Among those acts I feel I should call to your attention some of the following facts which I believe were testified to by witnesses for the Government, maybe in some parts by one or more witnesses for the defendant.

First, the good grades which were received by this defendant in attending law school at Vanderbilt University, also the good grades received by this defendant in the examination for a position with the Tennessee Valley Authority sometime about December, 1933, also his satisfactory work as an employee of the Du Pont Company at the Old Hickory plant from October 31st, 1933, through April 23rd, 1934, also his contacts and actions in connection with his fellow men, such as the dentist, Dr. Muriel E. Long in Illinois, in July and August of 1934, such as with Ralph Cribari who lived next door to him at Rye, New York, in the summer of 1935, and such contacts as were had with Mrs. Anna Webb, the real estate broker in Los Angeles, California, in January, 1935, also consider his actions in planning and in carrying out the scheme which you have

heard about in the evidence, also his successful actions in evading capture for nineteen months after

2093 October 10th, 1934, and also the armed condition of himself and his home at the time of his capture there in Glendale, California, on May 12th, 1936. These should be weighed against the acts of moroseness, period of depression, fits of temper, rage against his parents and his wife, illusions of grandeur, ideas of reference, thoughts of persecution, the reincarnation of Patrick Henry, in the extent that you may believe such conditions actually existed.

Keep in mind in making this evaluation that the legal test that controls your decision in this case. Such moods as being morose, or being depressed, such characteristics as temper and rage may be at sometimes in all of us and do not necessarily constitute an unbalanced or insane

Proceedings

mind. The test is, as I have said heretofore and briefly state it again, did Robinson know on October 10th, 1934, right from wrong, and did he realize the consequences of his own deliberate acts, and was his will power enough to control them. That is the defense, second defense, as I have pointed out, which this defendant has made to this charge, and that presents that issue of fact as to the capacity, the mental capacity, of this defendant to commit the act with which he is charged.

Keep in mind that if either one of the two defenses is sustained by the evidence in this case, either that
2094 there was no kidnaping or that even if there was a kidnaping that he was not sane as the term is generally used at the time of the kidnaping, the verdict, of course, would be not guilty. It is not necessary that both defenses be sustained, either one would be sufficient.

Your first duty, members of the jury, will be to attempt to reach a verdict in this case of either guilty or not guilty. If your verdict is not guilty, it should read, "We, the jury, find the defendant not guilty," in which case your deliberations will cease and you will return such verdict into court. If, on the other hand, it should be one of guilty, then it will be necessary for you to give further consideration as to whether or not the jury shall recommend punishment by death. I direct your attention again to the provisions of the federal statute control this phase of the case, which reads, "shall upon conviction be punished, first, by death, if the verdict of the jury shall so recommend, provided that the sentence of death shall not be imposed by the court if prior to its imposition the kidnaped person has been liberated unharmed."

In the federal courts, the sentence following a verdict of guilty is fixed by the court within the limits provided by the applicable statute and not by the jury. The applicable statute in the present case still vests that duty
in the court, but it also provides that the jury may,
2095 upon finding a verdict of guilty, recommend punishment by death under certain conditions as herein-after referred. If no such recommendation is made by the jury, the court cannot impose a sentence of death. If such

Proceedings

a recommendation is made by the jury, it is not binding upon the court, but will, of course, be given careful and serious consideration by the court in imposing sentence. Keep in mind, therefore, that if your verdict should be one of guilty, that you have the further duty of deciding whether or not you shall recommend to the court punishment by death. Whether or not such a recommendation should be made calls for an exercise by the jury of discretion and an evaluation of mitigating circumstances. It would be your duty to determine whether the defendant, in view of all the circumstances surrounding the commission of the crime, merited the death penalty. In exercising this privilege whether or not such a recommendation should be made, you are not bound by rules of law, but will make your own appraisal of the character of the conduct of the defendant as evidenced by his acts which were related to the commission of the crime with which he is charged.

Also keep in mind that you cannot recommend punishment by death if the kidnaped person has been heretofore liberated unharmed. The kidnaped person in this case was

Mrs. Alice Speed Stoll. She has been heretofore
2096 liberated by the kidnaper and returned to her home.

But this still leaves for your decision whether or not she was liberated unharmed. In considering and deciding this issue of fact, I instruct you that the statute, reasonably interpreted in the light of its purpose, refers to the condition of the kidnaped person at the time of her release. It bars the death penalty and also any recommendation by the jury to that effect if the kidnaper has released the kidnaped person unharmed, even though the kidnaped person may have received injuries during captivity from which she had recovered at the time she was liberated.

Accordingly, if your verdict is one of guilty, and upon consideration of the question of whether or not any recommendation of punishment by death shall be made to the court, it is necessary for you to first decide whether or not Mrs. Alice Stoll was liberated by the kidnaper unharmed. The word unharmed will be given by you its usual and ordinary meaning attributed to it in the ordinary

Proceedings

use of the English language. It means not harmed by the kidnaper during the commission of the offense or while in the custody of the kidnaper prior to liberation by him. The usual and ordinary meaning of the word harmed is hurt, or injured, or damaged. If you find that Mrs. Alice Stoll was liberated unharmed by the kidnaper, you cannot recommend punishment by death even though your verdict is one of guilty. If on
2097 the contrary you find that Mrs. Alice Stoll was not liberated by the kidnaper unharmed, you then give further consideration to whether or not in your judgment and discretion you decide to recommend punishment by death in accordance with the instructions hereinbefore given to you.

If your verdict is one of guilty and you decide to recommend punishment by death, your verdict should read, "We, the jury, find the defendant guilty and recommend punishment by death." If your verdict is one of guilty and you decide to make no recommendation, your verdict will read, "We, the jury, find the defendant guilty," and no more. Any verdict that you may reach in this case, one of not guilty, one of guilty without recommendation, or one of guilty with recommendation, must be a unanimous verdict, that is, must be agreed upon by all twelve of your number. It will be signed by one of your number whom you designate as your foreman.

Any further requests by counsel for either side?

Mr. Brown: Nothing further, Your Honor.

Mr. Hogan: Nothing further, Your Honor.

The Court: I believe the Clerk has prepared forms of verdict if you would like them given to the jury. Otherwise, we can let the jury write out their own verdict.

Mr. Brown: It is certainly agreeable with me to give the jury the form of verdict.

2098 The Court: Let Mr. Hogan see them—three separate forms.

Members of the Jury, the three possible verdicts have been prepared by the Clerk, and by agreement of counsel they can be left with you. You will sign the one that you agree upon, that is, your foreman agreed upon by you.

Proceedings

will sign such verdict as your foreman.

You may retire to your room upstairs to begin your deliberations. We will permit you to proceed with them for a reasonable length of time, and if it gets too close to the retiring hour and you feel that it is necessary to retire without further deliberations, you can notify the Marshal and he will let me know, and we may talk it over and see what the situation is, or we can be excused as the case may warrant.

Deputy Marshal Cassady was thereupon sworn by the Court, as follows:

You, Deputy Marshal, United States District Court for the Western District of Kentucky, do solemnly swear that you will protect the jury and keep the jury safe in its deliberations upon the verdict in this case.

The Court: We will now recess.

2099 After deliberating, the jury returned to the court room and the following proceedings were had:

The Court: Do you waive the call of the jury, gentlemen?

Mr. Brown: Yes, Your Honor.

Mr. Hogan: Yes, Your Honor.

The Court: Members of the jury, have you been able to reach a verdict?

Foreman Mattingly: Yes, sir.

The Court: Let the foreman read the verdict, please.

Foreman Mattingly: "We the jury find the defendant, Thomas Henry Robinson, Jr., guilty and recommend the death sentence."

The Court: Whom is it signed by?

Foreman Mattingly: Signed by William Mattingly.

The Court: So say you, all twelve of you?

Jurors: Yes, sir.

The Court: You wish the jury polled?

Mr. Hogan: I think they ought to be polled, Your Honor.

The Court: Each of you stand up. Is the verdict as read by your foreman your verdict?

(The above question was propounded to each juror who responded in the affirmative.)

Proceedings

The Court: Let the Clerk enter the verdict and
2100 make the docket entry.

The Court: Have you the verdict? Let me see it, please?

(Verdict handed the Court.)

The Court: Any other thing to be suggested by counsel?

Mr. Brown: You want to pass sentence tonight?

The Court: No.

All right, members of the jury, I want to thank you for a long and arduous task which you have performed. As I said in my instructions, it has been a long two weeks, you have listened attentively and cooperated with everybody and you have performed a civic duty that members of the community are called upon to perform at times. Some of you, I know, are on the panel that had been attending here regularly. We do have other cases that are coming up Monday morning, but I am going to excuse all of you that were on the regular panel. It will not be necessary for you to return any more at this term of court. I think you have served your term of service. You can be excused then. Call at the Clerk's office first, and then at the Marshal's office, if you will please, and you can be excused from further duty this term of court.

The defendant is in custody of the Marshal. .

Let the court be adjourned.

Mr. Hogan: Is the court going to accept the
2101 recommendation of the jury?

The Court: That will be discussed, I presume, if you gentlemen would like to take it up then, Monday morning at 10:00 o'clock.

Mr. Hogan: All right.

Mr. Brown: That's agreeable, Your Honor.

2102 Court convened on Monday morning December 13, 1943, at 10 a. m., pursuant to adjournment, and the following proceedings were had:

The Court: The case of the United States vs. Thomas Henry Robinson, Jr., in which you are a defendant and which was tried in this court for the last two weeks, the jury on Saturday night returned a verdict in which they

Proceedings

found you guilty and in the same verdict recommended punishment at death. You were present at the time the verdict was returned.

Mr. District Attorney, have you any recommendation to make in this matter?

Mr. Brown: Yes, Your Honor. I ask that the judgment of this court, in accordance with the verdict of the jury, be that this defendant Robinson be taken hence at some date to be selected by this Court, and by the Marshal of this court that he be electrocuted and put to death.

The Court: Mr. Hogan, have you any statement to make for your client to the Court?

Mr. Hogan: Yes, I have, Your Honor. First, I promised the Court some written motions for a directed acquittal, and I have those.

The Court: They may be filed as of today when they were made.

Mr. Hogan: And then I have, in addition to 2103 that, a motion in arrest of judgment.

By the Court: What does it set up?

Mr. Hogan: That the indictment upon which the defendant was tried and convicted does not state facts sufficient to constitute a crime against the United States.

The indictment does not contain such a statement of facts and circumstances as to inform the accused of the specific acts with which he is charged.

The indictment upon which this defendant was tried alleges in the language of the statutes that this defendant knowingly transported in interstate commerce a person who had been unlawfully kidnapped and held for ransom, to-wit: Mrs. Alice Stoll and that this defendant did not liberate her unharmed; that such bare naked allegations do not meet the requirements that an indictment must fully, directly and expressly, without any uncertainty or ambiguity, set forth all the elements necessary to constitute the offense intended to be punished; nor does the indictment meet the further requirement that a crime must be charged with precision and certainty, and every ingredient of which it is composed must be accurately and clearly alleged.

Proceedings

The indictment upon which this defendant was tried is not free from ambiguity, and leaves doubt in the mind of this accused of the exact offense intended to be charged and does not apprise him what he is called upon to
2104 meet.

The indictment upon which this defendant was tried, although alleging that Mrs. Alice Stoll was not released unharmed, nevertheless does not allege or charge any specific physical or bodily injuries or harm, and this defendant did not know, and could not know, what to expect or what defense he would be called upon to meet such bare, naked, unexplained allegations, because such allegations could have meant Mrs. Stoll was injured or harmed in any number of ways or to any number of extents or degrees, and such allegation is and was susceptible to any number of meanings and interpretations and is not clear or specific.

The offense charged and alleged in said indictment is duplicitious.

The indictment upon which this defendant was tried was and is wholly lacking in accurate and clear allegations and does not and did not warrant or permit the introduction of any evidence to sustain the allegation that Mrs. Alice Stoll was not liberated unharmed. Of course, Your Honor—

The Court (Interrupting): That is the same question that we discussed during the trial of the case when you made your motion that such evidence be excluded.

Mr. Hogan: Yes, we discussed it and, if Your Honor please, I would like to discuss it further because I have any number of cases that bear me out from the
2105 state courts and federal decisions, and supreme court cases.

The Court: Well I am, of course, familiar with the rule of law that you contend with, and such rule is a rather established one. It seems to me that the point is whether or not that rule is applicable to this case.

Mr. Hogan: That is right.

The Court (Continuing): And the authorities which you have wouldn't do anything but tell me what I already

Proceedings

know about the rule of law. After all, it is a question of judgment, I believe, whether or not that rule is applicable to this case. And in cases of this kind we have no decision of any other court that I know of, and I believe counsel agrees that this is probably the first instance of such a point being made in a case of this kind.

Mr. Hogan: That is all the more reason why that I think and insist, if Your Honor please, that we should go into it further before you impose sentence upon this defendant, because after all this is a matter of this man's life and I don't think that we should be in any hurry to take a life when we might make a mistake.

The Court: Well of course in a case of this kind, any ruling or any judgment that the Court might give is subject to review by the Circuit Court of Appeals of the Sixth Circuit, at Cincinnati, and any error that I might make, if such an error is made, is not irrevocable. There

2106 has been no hurry about it, and I have given the matter very careful consideration; I did at the time you made the point some eight or ten days ago, and since then I have thought it over in my own mind some more, and I believe so far as argument is concerned that I have about all that could be of any benefit to me. You urged those points on me before and I considered them. It just seems to me that, while your point of law is a good principle of law, it is not applicable to this particular case; and that the indictment sufficiently advises and charges what is necessary to be charged in order to justify such a recommendation by the jury.

Of course you may take an exception to the ruling and in the appeal which you will no doubt take that exception will be reviewed by the Circuit Court of Appeals and if my ruling is wrong, then of course it can be set aside.

Mr. Hogan: Well I certainly do want to reserve an exception.

The Court: Yes. Then let the motion be overruled with exception to the defendant.

Mr. Hogan: Now the next I have is a motion and grounds for a new trial. I take it that that is in order before the imposition of sentence. If not, I will withhold

Proceedings

it until after sentence.

The Court: I believe it is. Will you read
2107 your grounds to me?

Mr. Hogan: There are a number of them. Do you want me to read them?

The Court: I expect so—yes.

Mr. Hogan: The first is because the verdict of the jury is contrary to the weight of the evidence and contrary to law.

Because the verdict was and is one of an impassioned and prejudiced jury.

Because of the false and untrue testimony of witnesses Allen and Mr. and Mrs. Palmer concerning the existence or non-existence of the tourist camp facilities at Beachwood Inn or Beach Grove Inn.

Because of the Court's refusal to permit witness Mr. Carlisle to fully rebut the testimony of witnesses Allen and Mr. and Mrs. Palmer with things concerning such tourist camp facilities.

Because the Court erred in excluding the testimony of witness W. K. Powell, to which the defendant at the time excepted and still excepts, and made an avowal,

Because the Court erred in excluding the testimony of witnesses Joseph Hayse and Nellie Stoess Hayse to contradict and impeach the testimony of witness Ann

Woolet, to which the defendant at the time excepted
2108 and still excepts.

Because the Court erred in refusing to admit a prior statement or statements of Ann Woolet to be read to contradict and impeach her.

Because the Court erred in allowing Ann Woolet and Fowler Woolet to invoke the rule by refusing to allow their previous statements to be read to contradict and impeach their testimony on the ground that when they had given such statements the relationship of attorney and client existed between them and Joseph Hayse.

Because of error in instructions given by the Court and in refusing to give offered instructions of this defendant.

Because of the error of the Court in commenting upon

Proceedings

the testimony of Drs. Solomon and Crice and in telling the jury that they were not members of any Lunacy Commission of Jefferson County because no such commission was found to be provided for by the Kentucky Statutes; that such comment tended to and did sway the jury and tended to and did cause them to disregard the testimony of those two physicians and to destroy this defendant's defense of insanity.

Because of the error of the Court in commenting upon the testimony of witness Alvin Kirtley because
 2109 that had a swaying and prejudicial effect upon the jury in its verdict.

Because of the error of the Court in commenting upon and unduly stressing that this defendant had written that he was the kidnapper of Alice Stoll which comment tended to and did completely destroy this defendant's defense that Mrs. Stoll went with him willingly and swayed the jury prejudicially against this defendant.

Because of the error of the Court in commenting upon and unduly and impassionately stressing to the jury the questioned fact as to whether or not Mrs. Stoll had a cut on her head at the time she was released causing the jury to be prejudiced and impassioned against this defendant, and causing the jury to recommend the imposition of the death penalty upon this defendant because without such comment the jury would not have recommended the imposition of the death penalty upon this defendant.

Because of error of the Court in refusing to direct a verdict of acquittal and to dismiss the indictment at the close of the government's case.

Because the court erred in refusing to direct a verdict of acquittal and to dismiss the indictment at the close of the case for both sides.

Because of the error of the Court in overruling defendant's objections to the introduction of testimony
 2110 upon the condition of Mrs. Stoll at the time of her release and permitting such testimony to be introduced to which the defendant at the time excepted and still excepts, which said testimony erroneously permitted and enabled the jury to recommend the imposition of the

Proceedings

death penalty and without which they could not have so recommended, all of which highly and greatly prejudiced this defendant and his substantial rights.

Because the Court erred in overruling defendant's motion to strike all of the testimony of witness Knowles, the government's fingerprint expert, and all of the exhibits introduced and supposed to be introduced by him, because the said witness Knowles said the questioned fingerprints which he compared with genuine fingerprints could have been made by no other person than Thomas H. Robinson, a person other than this defendant, to which the defendant excepted at the time and still excepts.

Because the Court erred in refusing the offered testimony of this defendant, to which the defendant excepted and still excepts.

Because the Court erred in permitting the United States to introduce the testimony offered by it to which the defendant excepted and still excepts.

Because the proof failed to show that Mrs. Alice Speed Stoll was held for ransom or reward, or that
2111 any ransom or reward was actually ever delivered to this defendant. The testimony which tends to connect this defendant with the crime charged in the indictment was insufficient to warrant submitting this case to the jury under this indictment.

Because the trial Court erred in pronouncing judgment against this defendant.

Because the Court erred in permitting the jurors to have access to and to read newspaper accounts of the trial of this defendant, which said newspaper accounts were entirely prejudicial to this defendant and impassioned the jurors against this defendant.

Because the Court erred in ruling that this was a capital case and instructed the jury accordingly, and in permitting the said jury to recommend the imposition of the death penalty.

Because of the error of the Court in instructing the jury that they may recommend the death penalty because this was not and is not a capital case, and there was a complete lack of any evidence that at the time of the verdict

Proceedings

of the jury or at the time of the imposition of the sentence Mrs. Alice Stoll was in a harmed condition because she testified during this trial and neither she nor any other witness said or presumed to say that during this trial or

this defendant, that is, at the time of this trial, she
2112 was in a harmed, disabled, infirm or impaired physical condition from any injuries which may have been inflicted upon her at any time between October 10th and October 16th, 1934, by this defendant, and because the statute in question forbids the imposition of the death penalty or the recommendation of the death penalty by the jury if at the time of imposition of sentence of the defendant (that is today) the alleged victim is shown to be in an otherwise than harmed condition, the point being that Mrs. Stoll today is unharmed and is not in any physical harmed condition. Her doctor did not say that today or at the time she testified she was in a harmed condition; nor did her husband nor did anybody else say that she was permanently hurt back there in 1934 between October 10th and October 16th and as a strict interpretation of that statute it means that at the time of the imposition of the sentence, which is today in this case, Mrs. Stoll is not in a harmed condition and, therefore, it is the contention of the defendant that that being true, the jury was not at liberty to recommend the death penalty and, likewise, the Court would not be in a position to follow out the recommendation of the jury.

Now that is a point—I know that that point has been decided one time before but only once and only by one court.

2113 The Court: And that was adversely to your contention, was it not?

Mr. Hogan: That was adversely to our contention but that was not a death case, and they so held that it was not a death case because in that case the indictment was silent as to whether the victim was liberated harmed or unharmed. Now I refer to the Parker case. But the situation is otherwise here. Now that statute, when you interpret it, the word "imposition" is directly connected up with the condition of the victim upon the day of the

Proceedings

imposition of the sentence.

And I submit to Your Honor that we should consider that very cautiously, and proceed with all diligence because if you are going to construe the term "unharméd" in its commonplace meaning, as Your Honor has indicated, then I say that you should likewise be consistent and interpret this clause which relates to the time of the imposition of the sentence and as to the condition of the victim.

The Court: Now Mr. Hogan, let's read the statute right on that point so there will be no differences between us:

"Provided the sentence will not be imposed by the court if, prior to its imposition, the kidnapped person has been liberated unharméd."

2114 Now you are contending that that means that she has to be unharméd at the time of the imposition of the sentence. But the wording says "liberated unharméd." Does not the words "liberated unharméd" refer to the time when the kidnapper releases the victim? It is a question of whether she was liberated unharméd or to the contrary.

It seems to me that the plain words of the statute refers to the time as being the time of the liberation.

Mr. Hogan: Well in the Parker case they had an awful time deciding what that time referred to.

The Court: Well they decided it the same way that I am looking at it.

Mr. Hogan: They spoke of it as it should have meant if you walked the victim into court during the time of the trial—that that would be liberation, unharméd. And when you tie that up and interpret it in that manner, I say that that is as fair a construction as the construction that Your Honor evidently has in its mind.

The Court: Now there isn't but one Court that has ever construed that, so far as I am advised, and that is the Parker case which I have read, and I took my instructions to the jury directly from the opinion in the Parker case. I told the jury exactly what the Court said in that case with reference to the construction of this statute, which

Proceedings

is the only judicial construction which we have in
 2115 the country.

In addition to that, I feel that that construction is consistent, entirely consistent, with the plain and unambiguous meaning of the phrase used, "liberated unharmed."

Mr. Hogan: Well didn't the legislature propose to offer some inducement to the kidnapper that if his victim was not permanently hurt or killed that he—

The Court (Interrupting): Well it doesn't say "killed" now. It says "unharmed."

Mr. Hogan: The Parker case says "killed."

The Court: Well I know but this statute did not say "killed."

Mr. Hogan: They said in the Parker case that the legislature must have preferred a live—

The Court (Interrupting): The courts said that was the purpose behind the statute to give some incentive to the kidnapper to return a person unharmed, so that the death sentence could not be imposed but certainly the statute can't be construed that if the victim does not die the death sentence should not be imposed.

Mr. Hogan: They did not impose the death penalty in the Parker case.

The Court: I have now forgotten the facts about that point of the case but I believe the courts said
 2116 the indictment didn't charge a death sentence, did it?

Mr. Hogan: It seems that it said that because one of them got six years and one got two.

The Court: Well the Court said that the indictment was so drawn that no death sentence was charged in it and therefore the death sentence could not be imposed.

Mr. Hogan: I have the record in that Parker case, and they certainly tortured their victim.

The Court: Well wasn't it a question of pleading in that case?

Mr. Hogan: Yes, there was a question of—

The Court (Interrupting): Specifically upon the fact that the indictment didn't justify it.

Proceedings

Mr. Hogan: Yes, but when it came to sentencing them, they gave one of them six years and one of them three years, and one of them—

The Court (Interrupting): Well as a matter of law they couldn't give them a death penalty because the indictment wasn't drawn that way.

Mr. Hogan: Well, I mean, though, if Your Honor please, that they could have given them a life sentence; and if they only gave them one six years and one three; and I believe that victim there died shortly after that because they so brutally tortured that fellow—they
2117 burned his feet and they just did everything to him.

Now if we are following the Parker case in its construction, I would like to submit that the Parker case ought to be considered when the sentence in this case is imposed.

The Court: Now, do those complete your grounds or do you have any more?

Mr. Hogan: No; I have some more.

Because the Court erroneously permitted evidence of prior crimes and indictments to be introduced against this defendant, to which this defendant at the time excepted and still excepts.

Because the Court erroneously permitted evidence of lay witnesses to establish the fact that this defendant knew right from wrong to which he objected and excepted, and still excepts.

The Court: Well, your own doctor said that, didn't he?

Mr. Hogan: No. I refer you—

The Court (Interrupting): I know some lay witnesses said that but one of the defendant's own doctors said it, too, didn't he? Even if it was erroneously admitted and your own testimony shows the fact that it was so, then there isn't any prejudice is there?

Mr. Hogan: Well he was speaking expertly, though.

But the Court permitted a dentist from Illinois and
2118 some other lay witness.

The Court: But you put your doctor on. I didn't put him on. And you asked him to testify as of October 10, 1934, whether he was speaking expertly or whether he

Proceedings

was speaking from an examination of the defendant—that was evidence, your evidence, on that point. And, as I understand it, you conceded in your closing argument that the defendant did know right from wrong.

Mr. Hogan: Dr. Brackin said that in his opinion he knew right from wrong, but that he could not control his will.

The Court: Well, that's all they asked those lay witnesses, whether he knew right from wrong, was it not? You did not ask them anything about the control of his will.

Mr. Hogan: But the point is that I do not think lay witnesses know—could be able to say whether a person knows right from wrong.

The next one is because the Court erroneously permitted a letter to be read which this defendant had written while illegally being held in Leavenworth Penitentiary, which was written prior to this defendant's arraignment, to which this defendant objected and excepted, and still excepts.

2119 The Court: Well now that was put in evidence purely for the purpose of having a genuine specimen of his handwriting, wasn't it?

Mr. Hogan: It was put in evidence to show what it showed.

The Court: No. Are you talking about the one about the attached property?

Mr. Hogan: No, sir, I am talking about the one where he said, "I would like to see Jean Breese again and I feel like I am qualified to write a book on how to get a job." It was a three-full-page letter which I submit was in direct violation of the rule written by Chief Justice Frankfurter in a Supreme Court opinion in which he says, "No statements are admissible against one until they are legally arraigned."

The Court: The defendant was arraigned, and there was not any question about it, in May 1936, was he not?

Mr. Hogan: It was a nullity.

The Court: No. His plea was a nullity but he was arraigned, wasn't he?

Proceedings

Mr. Hogan: Your Honor I don't think so because he was arraigned here before Your Honor. They do not require two arraignments.

The Court: Well they set aside his plea and let him plead over again.

2120 Mr. Hogan: Well I thought we had proceeded throughout this trial on the premise that he had not been arraigned.

The Court: The assumption I thought was that his plea of guilty was not a valid plea.

Mr. Hogan: That was made, of course.

The Court: I don't know that there was an assumption that he was not given an opportunity to plead.

Mr. Hogan: I may call Your Honor's attention to the fact that you would not allow Commander Dewey, as one, testify because of the fact that Your Honor considered that he had not been arraigned.

The Court: That was out of an abundance of caution, as you remember. The District Attorney wanted him to testify and I said I did not think there was much in your point but I said out of an abundance of caution I would not allow him to testify, and I thought it would be well not to have Mr. Dewey testify.

Mr. Hogan: And another thing they had the record from Leavenworth, the medical history, which the District Attorney likewise attempted to have read and that was excluded on the same basis that he had not been arraigned.

The Court: There may be something in your contention, Mr. Hogan, but I don't think there is very
2121 much. However, I say that that is a point which you may reserve to the Circuit Court of Appeals. That is a question that I don't know has ever been passed upon by any other court, so far as I am advised.

Mr. Hogan: You mean other than Justice Frankfurter?

The Court: Yes—well, that did not present the same question.

Mr. Hogan: That presented the principle.

The Court: The principle, but not as applied to this particular case—the established principle.

Proceedings

Mr. Hogan: Well I think if we use the principle and then apply the facts to the principle, I think we have got the principle involved in this case—

The Court (Interrupting): Well, as you probably know, and as you have read the discussions, there is quite a bit of contrariety of opinion about what the opinion of Justice Frankfurter actually means. I have read it two or three times and as I said at the time, I am not quite clear as to what he means other than other judges have indicated the same thing, and I believe that until we get some further expression from the Supreme Court the exact effect of that ruling is not going to be known. It is so given that it leaves quite a lot open to question.

2122 Mr. Hogan: Well I know but it is still the outstanding opinion so far and it has not been overturned.

The Court: One District Judge not so long ago felt it was not the right opinion and declined to follow it, I believe.

Mr. Hogan: But the trouble about that is, the Supreme Court has got the last say. What they say is final and whether we like it or not—

The Court: Well, of course, the McNabb opinion must be construed in the light of the facts of the McNabb case. In that case the FBI Agents took this man and kept him in confinement for some 24 or 48 hours, I believe; and they didn't let anybody see him; and he was subjected to the third degree, and the case was a most aggravated case as Justice Frankfurter pointed out. Now that certainly is entirely different when this man comes in a year later, or two years later, whenever it was, and voluntarily writes a letter. There was no compulsion on him to make him write that letter. There was no third degree. I understand that he wrote the letter at his own request. The facts of the two cases are so widely different that it is hard to see how the facts of the McNabb case could apply to this case even if there was no arraignment.

Mr. Hogan: But to follow that up, though, he
2123 was picked up in California and brought here and kept for two days, held incommunicado most of that

Proceedings

time; and that set in motion his being put into the position in Leavenworth Kansas in the penitentiary of where this letter that was complained of was written.

Now there was an inducement offered to him in that letter. He had been in solitary confinement, as he told you—

The Court (Interrupting): But it was his own inducement—he wanted to get something, didn't he? But nothing was promised him.

Mr. Hogan: The inducement to get out of there was there, and the law is on that that any inducement, any promise, however slight, that motivates a man to make a statement, no matter how slight the inducement, cannot be used against him.

The Court: I think it is best for you to reserve that point. I have expressed my views on it. I think the cases are so widely different on the facts that the McNabb principle is not applicable in this case.

Mr. Hogan: Then the defendant says that not only the aforesaid grounds for a new trial materially and substantially affected and do now affect his substantial rights.

Wherefore, the defendant, Thomas Henry Robinson
2124 Jr., respectfully prays as follows: That the Court permit this defendant to file this motion and grounds for a new trial and that the Court fix a time not sooner than ten days for a hearing on said motion; that this Court grant to this defendant a new trial and that the verdict of the jury and the judgment thereon be set aside; and that this defendant be granted a reasonable time in which to file motion and grounds for a new trial. That motion has been accepted by the District Attorney.

The Court: I do not believe that there is much in that motion that we did not discuss during the course of the trial other than your references to the comment that the Court made upon certain phases of the evidence in its instructions.

As I understand the law, it is not only the right of the District Judge to so comment, but in some cases it is practically his duty to so comment and to call the attention of the jury to certain phases of the evidence which he thinks

Proceedings

they should consider, provided that the Court makes it plain to the jury at the time that they are the sole judge of the facts and that those views are merely his views and are not binding upon the jury in any way.

I believe that two or three times during the instructions I specifically said that to the jury.

Now with reference to the further particular
 2125 points that you refer to, about the letter that the defendant wrote, I repeated that admonition to the jury after I finished my comment upon it. Don't you recognize that principle to be the one that exists in federal courts?

Mr. Hogan: I recognize that, but I would like to point out what the effect of those comments were on the jury—

The Court (Interrupting): But, just a minute. If the law gives the court the right to make the comments, or the duty to make the comments, do we discuss the effect of it? If I have the right and duty to make it, I make it; and what effect it has is proper, isn't it? Certainly they do not expect the Court to make the comment if it is not to have any consideration by the jury. I had might as well not make it if it is not to be considered proper.

Mr. Hogan: Now Your Honor has used the word "duty" to make the comments. I don't know that it is the duty of the court to make comments. Some courts do, and some courts don't.

The Court: I don't consider that the duty of the Court in every case, and as you know I haven't done it in every case. I do do it occasionally in cases where I think comment properly should come from the Court, but this was one of those cases in which I thought certain facts should be pointed out to the jury.

2126 Mr. Hogan: Well will you permit me to tell Your Honor what effect I thought your comments had upon the jury?

The Court: Yes.

Mr. Hogan: Well now, in the first place, Your Honor mentioned the fact that the District Attorney, and for that matter the defendant's attorney, had omitted any reference to a letter written on a typewriter—

Proceedings

The Court (Interrupting): I don't believe I said "omitted any reference"; I said they did not attach much importance to it.

Mr. Hogan (Continuing): And that letter was—

The Court (Interrupting): I think Mr. Inman did refer to it in his closing argument.

Mr. Hogan (Continuing): And that letter was, "I am the kidnapper of Alice Stoll." And in that letter there was some reference to a cut upon the head, but that that cut had been healed—

The Court (Interrupting): Partly healed.

Mr. Hogan: Partly healed. That unduly, as I take it, emphasized or, rather, impassioned the jury that the Court must have thought that—that it wanted the death penalty imposed or it would not have emphasized that particular point in the evidence.

The Court: No. Let me tell you where that **2127** came in the instructions. That came in the instructions on the question of whether or not this was a kidnapping or whether she went voluntarily with the defendant. I pointed out that the defendant had admitted writing that letter, and the letter in its opening sentence said, "I am the kidnapper of Alice Stoll," and that statement by the defendant was inconsistent with his present claim that she went voluntarily with him. You don't kidnap people that go with you voluntarily; and that when he claimed he did not hit her and force her to go when the letter said she did have a cut which had partially healed, that indicated that the cut must have been inflicted prior thereto. That all dealt with the question of whether she went with him voluntarily or not. Of course, she was liberated some days after that.

Mr. Hogan: But when the Court, in a case of this type, and when it is a serious life or death case, the jury is always influenced by what the Court says because they take the position that if the Court thinks that ought to be emphasized they should follow it. It has been my experience that the jury follow like sheep the Court's comments, as a rule.

The Court (Interrupting): Well what is the purpose

Proceedings

of the Court's comments? Why should the law say that the Court should make them or can make them if they don't expect the jury to pay any attention to it.

2128 Mr. Hogan: But it is a question of whether that impassioned them, and got them against this defendant, and I believe that it did, otherwise I would not have incorporated it in this motion and grounds for a new trial.

And then another comment the Court made was with reference to Dr. Solomon and Dr. Crice. The Court told the jury that they had said, or that one of them had said, that they were members of the Lunacy Commission, and you said that you had examined the statutes and that you could find no such provision in the statutes for that.

The Court: Well, is there such a provision?

Mr. Hogan: Not that I know of, but I know that—

The Court (Interrupting): Well, isn't that a correct statement?

Mr. Hogan: That was a correct statement, but we are talking about the effect of it. I believe they said, "Well we are appointed from day to day."

The Court: When those doctors testified I challenged the correctness of their statement at the time. I asked them, I said "I don't know of any Lunacy Commission that you claim to be a member of. What is it?" And they tried to explain, and I said that I knew of no statute that creates one, and I tried to tell them what I thought the

statute was, but they both insisted that they were
2129 members of the Lunacy Commission. I examined the statutes afterwards and I couldn't find any Lunacy Commission, and I thought it was proper to tell the jury, in view of the evidence, what my finding was, and I think my findings were correct. I said in my instructions that I couldn't find. I said, "It might be there but I can't find it. If counsel will show it to me I will change these instructions to meet what the situation is."

Mr. Hogan: There wasn't any statute like that that I know of, and you finally backed them down on that when they were on the stand.

The Court: Oh, no, they left the stand, both insisting

Proceedings

that they were members of the Lunacy Commission.

Mr. Hogan: Well suppose they did. That had the effect of tearing down the defense—

The Court (Interrupting): Well now do you think I should let the jury have an ~~im~~proper impression from what those witnesses testified? You are claiming fairness to your client, certainly the prosecution is entitled to fairness, too, and if they have given the jury an improper view of that question, that improper view should be corrected, shouldn't it?

Mr. Hogan: Then I think Your Honor should have come along and said to the jury that Dr. Cocke made a diagnosis that this man was a constitutional psychopath and then I asked him when he was on the stand, 2130 "If it could be shown that this man's condition is normal now, would you say that your diagnosis was wrong in the first place?" And he said, "I would."

Well now the evidence pointed very definitely to the fact that there was not anything wrong with this man as of the date he was standing trial. I think if you wanted to comment upon doctors' testimony, that situation now I think is true—

The Court (Interrupting): Well now, Mr. Hogan, you certainly don't think that when I start commenting on a few bits of evidence that I assume commenting upon every witness that testified? There were probably over one hundred witnesses who testified in this case, and—

Mr. Hogan (Interrupting): Well, Judge, did you comment upon any of the witnesses for the prosecution?

The Court: I don't think that I did. I don't think that I was affected by some of their witnesses like I was by some of the witnesses—one or two that was presented for the defense.

Mr. Hogan: Do you think it was fair?

The Court: Well now Mr. Kirtley's testimony that you referred to was to me so out of reason and unreasonable that I don't think the court should let such tes- 2131 timony go by without his comment as to what he thought about it. There is a man who just testified to a story that hardly holds water.

Proceedings

Mr. Hogan: Do you think then that it was fair to let go unchallenged the statement of Mr. and Mrs. Palmer that they had erected a sign at this tourist place down there which displayed Falls City beer when Falls City beer was not even legalized or, rather, beer generally was not even legalized until 1932 or 1933.

The Court: Well didn't such signs appear when near beer was in existence?

Mr. Brown: Why of course they did—there was no question about it.

Mr. Hogan: They said that sign was put up in 1931—

The Court (Interrupting): Well we had near beer then, didn't we?

Mr. Brown: Yes we did.

The Court: I think we had near beer for several years before prohibition was ruled out. People advertised their near beer as beer; they didn't put up "Falls City near beer."

Mr. Hogan: But the inference was that that represented the advertisement of beer. I think Your Honor should have—

2132 The Court (Interrupting): Well, it was beer. What was it? Less than 2¾% alcoholic content? I don't remember—

Mr. Brown: 3 point 2 is what it was, I think.

The Court: I don't remember what the percentage was, but it was beer and the alcoholic content was limited. That was all.

Mr. Hogan: Not until 1933.

The Court: I think you are mistaken about that. We didn't have full-strength beer until 1933, but we had beer with a certain percent alcoholic content before that time.

Mr. Hogan: I don't think so, Your Honor.

The Court: Well I may be wrong; that was my remembrance of it.

Mr. Hogan: The first beer that we had was what we call weak beer which was 2¾% alcohol back in 1932, or shortly after President Roosevelt was first elected.

The Court: Well I just don't recall that now. At least at the time the instructions were given I thought your

Proceedings

argument on that point was—

Mr. Brown (Interrupting): Here is a Falls City salesman sitting right on the jury (indicating the jury in another case)—we can ask him. Did you have near beer?

Juror: Yes, sir.

2133 Mr. Brown: Was it advertised as “Falls City beer?”

Juror: Yes, it was advertised as beer.

The Court: Well that was not in the evidence.

Mr. Hogan: That was not in evidence.

The Court: No, but it merely indicates the view that I had about it. That is the reason I didn't comment upon it. I thought the point—well I could have made it but I didn't think it had very much merit in it. If I had made it I would have had to qualify it, which probably would have been worse than not making it at all.

Mr. Hogan: And then Mr. Allen testified that there wasn't any place on those premises down there, either he or the Palmers, or probably both, to accommodate tourists, and I brought the man in who owned the place and he contradicted that—Mr. Carlisle.

The Court: I don't remember whether it was Mr. Allen or Mr. Palmer, but one of them said they had that garage there with rooms over it.

Mr. Brown: Mr. Allen.

Mr. Hogan: And he said that there wasn't an inch of space down there to accommodate tourists.

Mr. Brown: They never rented an inch of space; it was all taken up by his family—his son and his daughter who was expecting a baby and another unmarried

2134 daughter and another married daughter.

The Court: I think those three witnesses, Mr. Allen and Mr. and Mrs. Palmer, all testified that at no time while they were there had they rented any of the property to anybody else or had anyone outside of their family at any time on there or living there except that old man about 70 years old who pitched a tent there.

Mr. Brown: That is correct.

Mr. Hogan: And then another thing, the government laid particular stress that this defendant was deliberately

Proceedings

telling a falsehood about that, yet he specifically mentioned some cabins, cottages I believe he said, beyond the log cabin, and the government didn't go over there and come back and even attempt to show that those cabins were not there.

The Court: Were those cabins designated?

Mr. Brown: Not named at all. "Beyond the log cabin" might be from here to Chicago.

Mr. Hogan: He described them in detail—

The Court: But he didn't place them, he didn't give any name to them, did he?

Mr. Hogan: He said "log cabins"—

The Court (Interrupting): Well how could they rebut that? "Cabins beyond the log cabin," why anyone who came in to testify about that you would say it was
2135 another one.

Mr. Hogan: Well it shows that he was not trying deliberately to deceive or cover up or smear as they would have you believe, because he said down on the Dixie Highway he was driving a Chrysler car and described it as being in a grove of trees; and over here he described the cottages with a store in front. They made a great point of his smear campaign on that and if he had been on a smear campaign he would have said, "Why we didn't go anywhere. We went up some lonely road." And they couldn't have checked on that.

The Court: It was just as much of a smear wherever they went, wasn't it?

Mr. Hogan: If untrue, yes. Now I have talked to this defendant and I understand from him and I will tell you in exactly his own words that as early as 1936, at the instance of Mr. J. Edgar Hoover—

Mr. Brown (Interrupting): Now I am going to object to any remarks to the Court unless they came out on the trial of this case.

The Court: I don't think we want hearsay testimony, do we, now?

Mr. Hogan: Only if Your Honor is interested in knowing that as early as 1936 this defendant had given Mr. McDonough a statement of the facts substantially—

Proceedings

2136 Mr. Brown (Interrupting): I am going to object to that; he is making an argument which is outside the record itself.

The Court: Well that was a question of fact which was submitted to the jury, wasn't it? The jury decided that question of fact against you, and I am not going to review that question of fact.

Mr. Hogan: Well isn't Your Honor interested in knowing that they had that information, and that this was not a concocted defense interposed at the last minute?

The Court: I had that information some time ago that that same point was made back in 1936 or 1937.

Mr. Hogan: 1936, while he was in Leavenworth and while there was no idea that he would ever be back for trial.

Mr. Brown: He made it in his motion and grounds for a new trial in 1936 when Mr. Clem Huggins and Mr. Bob Hogan were associated in his motion for a new trial; and Judge Hamilton made them strike it out of the motion.

Mr. Hogan: I am talking about the statement that this defendant gave to one of the FBI Agents in 1936 while he was at Leavenworth, Kansas.

The Court: What does that prove? He made the claim then and he makes the claim now. Does that make it true because he made it two or three times?

2137 Mr. Hogan: They claim the first time they heard about this highway—this Dixie Highway instance was when he testified from the stand.

Mr. Brown: I claim that, and I say it is the first time I heard it.

Mr. Hogan: You do not claim that the FBI or Mr. Hoover did not know about that?

Mr. Brown: I have no idea what every member of the FBI—there are over 3,000 FBI Agents, and I have no idea what they all know. I now say and I now claim that the first time it was ever brought to my attention was when he testified from the stand.

Mr. Hogan: Well I say if the Justice Department is holding out on the District Attorney, there is something wrong.

Proceedings

The Court: Certainly the facts as indicated by Mr. and Mrs. Palmer on direct would indicate that the FBI or Mr. Brown's office did not know anything about it until after the defendant testified to it here in court.

Mr. Hogan: Mr. and Mrs. Palmer came in and bought the place in July, and that they did not come back to the place—

The Court (Interrupting): But what I mean, my point is this: If Mr. Brown had known about it, which you claim he does, he would not have been waiting until
2138 the last few days of the trial to find witnesses to rebut it.

Mr. Brown: I wouldn't have stayed up all night looking for those witnesses. I will tell you that.

The Court: That would have been done some time before:

Mr. Hogan: But what I am trying to say is they say that this boy at the last moment deliberately injected into this a defense destined or designed to smear Mrs. Stoll, when that has been his contention all the time that he had known her.

Mr. Brown: If it had been, Mr. Hogan would have brought it out when Mrs. Stoll was on the stand.

The Court: Oh, I have no question but that that was his defense. He made it two or three times.

Mr. Hogan: And I want to say my own self that—

The Court (Interrupting): It was clearly given to the jury.

Mr. Hogan (Continuing): I want it to show that it was not a product of my defense, but it was a defense that is and he has held it ever since he was in Leavenworth, Kansas in 1936.

The Court: Mr. Hogan, I can say this, and I am glad to have the opportunity to say it, that I appointed you as counsel for this defendant because the law requires that some counsel of ability and integrity represent such
2139 a man. It was a burden that had to be assumed by some member of the local bar; whoever undertook it had hard work and no compensation. I requested you to take it, and you did not want the job. I thought that

Proceedings

due to the experience that you had had and of some connection with your former associate that you had had with this case, and certain facts that you knew, might make you more available and acceptable as attorney than somebody who knew nothing about the case; and at my request, not your own, and probably over your wishes, you told me it would require a lot of work and that it would take a great deal of your time and that you could ill afford to do it, and I requested you to do it. You assumed that obligation which probably rests upon you as a member of the bar and you have performed it very nobly. You have handled this case in a very efficient and industrious way. You have worked hard on it. You have represented this man as well as any lawyer at this bar could have represented him. You made every point that I think could have possibly been made and you argued it with earnestness and zeal. And you are duty-bound, when your client tells you a story which he insists go to the jury, that that client be permitted to tell that story to the jury and if Robinson wanted to tell that story to the jury, you would have been remiss in your duty if he did not tell it if he insisted that it was the truth and wanted to tell it.

2140 I think that the verdict in this case is in no sense a reflection on you. The way you have handled the case is no reflection on you. And I want to commend you very highly for the zeal and earnestness in which you have handled this case. I think it is a very fine recommendation of your ability as a lawyer and your willingness to do your duty, even though it was a most arduous one and at times an unpleasant one. I don't think there ought to be any doubt in the minds of the community here that there is any reflection on you in the conduct of this case. I am very glad to make that statement at this time.

You had a case that was very, very difficult. We all know that from the evidence which we have heard. It was practically impossible, as the evidence developed, to secure a verdict of acquittal.

Mr. Hogan: If Your Honor please, if you appreciate my services, I will ask you not to kill my client.

The Court: Does the defendant himself wish to say

Proceedings

anything?

Mr. Robinson: Your Honor, the District Attorney has made several allegations that I conducted a smear campaign from the beginning of my forced marriage. I just want to say at the outset that that forced marriage was not a smear campaign. The jury returned a verdict that upheld my contentions at that time. And the statement that

I was alleged to have made to Mr. Atkinson in this
2141 case, concerning three girls, that I would smear them if they came into court and faced me, I just want to take the opportunity now to deny that altogether. There were no three girls, there were only two girls, and that they did face me in court and I did not smear them, as I was alleged to have said.

In this case, as Mr. Hogan, I gave these facts to the FBI at the instance of Mr. J. Edgar Hoover in 1936, and I did not concoct this plan here in this court in an effort to win this case. I told the truth to the best of my knowledge and belief at that time. My whole life has been laid out here before the Court. It is difficult to tell anybody's life story without a few discrepancies, but I do want to point out that Your Honor himself stated that I left Louisville in August of 1931 to go to Chicago, at which time that Beach Grove Camp was not in existence, but I think by Mr. Brown's own figures, which I did not have available at that time, showed that I was working for the Mutual Life Insurance Company in the Starks Building until September 12th, and I was working there for a man by the name of Mr. Miller, and I had a cash bond up with Mr. Miller while I was in the insurance business, and it was many weeks thereafter before I was able to recover this cash bond as a result of them having to check my accounts.

The Court: I believe I took your own statement on the time that you left Louisville. I checked back
2142 the evidence on it and, as I recall, you yourself stated that you left Louisville the last of July or the 1st of August.

Mr. Robinson: Well I say, Your Honor, that that was a discrepancy in telling my life story that could not have been avoided at that time, but I think the record that Mr.

Proceedings

Brown has will show definitely that I was mistaken in my testimony on that point.

The Court: The point is immaterial, really, isn't it? The evidence shows—

Mr. Brown (Interrupting): October 10th—

The Court (Continuing): October 10th or 12th was the first time, and it makes no difference whether you left in August or September, they both are prior to October 12th.

Mr. Robinson: And as I say, I was here several weeks following that, but I don't make an issue of that, but I just want to point out that it was a mistake as to time and place on my part at that time.

And I want to further say that I think I am sane at this time but as I look back over that period of 1934 I am fully convinced that there was something wrong with me at that time. There is a lot of conflicting testimony here from psychiatrists but regardless of what they all say, I know in my own mind that I was not sane. There was something wrong with me.

2143 I want to further say that there are what I think are mitigating circumstances in this case. I am not a criminal in the sense of the word it is usually conceived. I had a good school record, and I had a good employment record. Several of the government's own witnesses got on the stand and gave me a highly good recommendation.

I was convicted in this court and went to Alcatraz Prison and served six and a half years there. Formerly I was at Leavenworth and I was at Atlanta. During the course of my time in all three of those institutions I maintained a 100% clean record, and the prison authorities here so testified. I made a model prisoner, and I want to ask Your Honor that I be permitted to go back to some penitentiary and create a new life for myself in that penitentiary rather than to receive the death penalty.

I thank you.

The Court: Now the question of sanity or insanity on October 10, 1934, was at least one of the chief issues in this case. That was a responsibility for the jury to de-

Proceedings

cide. I know that the defendant contends that he was not sane at that time, just like he has stated at present. He stated that to the jury but the jury, however, did not think his contention was sound and they, as triers of the facts, decided otherwise. It is not for me to review the jury's verdict on a question of fact at that time.

2144 about which the evidence was conflicting and about which there was more than an abundance of government proof to sustain their decision.

And the other question of fact, as I pointed out to them, was likewise disputed and for the jury to decide, and they have passed upon it. If either one of these questions of fact had been decided the other way, I told the jury specifically in my instructions that they should return a verdict of not guilty. They gave consideration to all of the evidence and found both of those questions of fact against you. I think so far as the question of facts is concerned, there is nothing for me to do but accept them.

Of course, a case of this kind presents a very difficult problem for any trial judge. I have given a great deal of consideration to the question involved because such a duty is a heavy responsibility, and of course, a rather unpleasant one—a very unpleasant one.

I have tried to consider the manner of the statute as to what it means, as to what controls. It seems to me that this jury would never have recommended the death penalty in this case except for the effect which they gave to the defense that the defendant made representing the relations between him and Mrs. Stoll. I believe if that contention had not been made, this jury would never have recommended the death penalty. That is only my view,

2145 but from my experience and from my own thought in the matter, I doubt very much, even if they had made such a recommendation, the Court would have considered it, except for the testimony on the part of the defendant, which I am accepting as untrue as the jury so found it and, as I have stated, at the time I thought the government's evidence overwhelmingly supported their contention in the matter.

It seems to me that the purpose of this statute is that,

Proceedings

when twelve men or women have considered this case and heard everything about it in the length of time they have, and have given it their careful consideration for two hours or more, and all of them have reached the conclusion that punishment should be one by death, the Court should adopt such recommendation unless there are facts shown to it which shows that such recommendation was out of line.

The Court does not feel in this case that such recommendation was out of line and, accordingly, it is going to accept that recommendation although it is a most unpleasant duty.

This case should be appealed. Any question about the Court's rulings in this case, the Circuit Court of Appeals should pass upon it and give this defendant every right that he has.

If it is felt that the recommendation, or the **2146** acceptance of the recommendation, is severe, it is always the remedy of appealing to the President of the United States for a commutation or a change of it.

The Court's ruling in this matter is in no sense final, if others higher in authority feel that the jury's recommendation or the Court's thoughts in the matter are not in line with what the statutes justify.

Accordingly, the sentence of the Court will be punishment by death, inflicted in the manner prescribed by the laws of the State of Kentucky, which is electrocution, as provided by Section 542, Title 18, of the United States Code Annotated.

For the purposes of permitting the defendant ample time to take his appeal, or perfect his appeal, and have his case presented to the Court of Appeals, the execution of the sentence will be postponed and the date set by the Court at this time will be Friday, March 10, 1944.

State of Kentucky, }
County of Jefferson, } Set.

I, Roberta Gentry, Official Reporter for the United States District Court for the Western District of Kentucky, hereby certify that the foregoing 172 to 217 pages, pro-

Proceedings

ceedings had before the trial, including the arraignment; and the 218 to 1520 pages, proceedings had during the trial; and the 1520 to 1548 pages, proceedings had on December 13, 1943, after the trial and before the sentence and including the sentence, is a true, complete and correct transcript of the evidence introduced and heard and offered to be introduced and rejected; and all objections, exceptions and avowals concerning the same, as well as all papers and exhibits offered to be used or used as evidence on the trial; and all of the instructions given; and the verdict of the jury; and all of the proceedings had preliminary to the trial of this case, including the arraignment, and all of the proceedings had during the trial, and all of the proceedings had after the jury returned the verdict, including the sentence, in the case of United States of America vs. Thomas Henry Robinson, Jr.; that the proceedings were reported in shorthand and on the electric recording machine and transcribed by Mary Louise Fichtner and me; and that this transcript includes all of the proceedings as above set out on the trial of this case from September 28, 1943, including December 13, 1943, the date of the sentence.

I further certify that I am not related to any of the parties to this litigation by blood or marriage; and that I am in no way interested in the outcome of said litigation.

2148 Given under my hand as Reporter aforesaid, this the 6th day of January, 1944.

Roberta Gentry,
Official Reporter.

At the conclusion of the evidence in chief on behalf of the United States, defendant by counsel moved the Court to direct the jury to return a verdict of not guilty because the United States had wholly failed to prove the allegations charged against the defendant in said indictment, said motion being overruled with exceptions allowed to defendant.

At the conclusion of all the evidence in the case produced on behalf of the United States and on behalf of the

Bill of Exceptions

defendant Thomas Henry Robinsen, Jr., the defendant by counsel renewed its motion for the Court to instruct the jury to find the defendant not guilty because on all the evidence introduced there was no proof of the allegations charged against this defendant in said indictment, which motion was overruled with exceptions allowed to the defendant.

On Saturday, December 11, 1943, all evidence both on behalf of the United States and on behalf of the defendant Robinson having been completed, request was made on behalf of the defendant Robinson to the Court to charge the jury as follows:

"1. The argument of the United States Attorneys is not evidence, and is not entitled to any additional weight or respect by reason of the fact that such argument is made by such government officials.

"2. 'REASONABLE DOUBT' is that frame of mind which forbids you to say, all the evidence considered and weighed, 'I have an abiding conviction of the defendant's guilt.' If you are in the frame of mind where, if it was a matter of importance to you in your own affairs, away from here, you would pause and hesitate before acting, then you have a reasonable doubt. A reasonable doubt exists where, after the entire comparison and consideration of all the evidence, the minds of the jurors are left in such a condition that they cannot say they feel an abiding conviction, to a moral certainty, of the truth of the charge.

"3. Witness Ann Hobbs Woollet was asked whether or not she had made certain statements previously to witnesses Joseph Hayse and Nellie Stoess Hayse, and witness Woollet stated that she had not consulted attorney Hayse and had not made statements asked of her in the foundation questions; witnesses Joseph Hayse and Nellie Stoess Hayse stated that witness Woollet had consulted witness attorney Hayse and that she had made certain statements to attorney Hayse and Nellie Stoess Hayse which were reduced to writing on September 9, 1935, and then, when witness Woollet was confronted with such testimony and facts, and when shown an affidavit said by said witnesses Hayse to contain witness Woollet's statements, witness Ann

Bill of Exceptions

Hobbs Woollet then said she had signed the statement in question but did not remember giving the statements contained therein. If you believe that Ann Hobbs Woollet intentionally made a false statement, or falsely or intentionally stated in answer to the foundation question that 'I don't remember,' or 'I do not recall,' or 'I don't know,' or believe that witness Ann Woollet intentionally made a false statement with respect to any material fact, you may disregard all of her testimony.

"4. Testimony of Ann Hobbs Woollet should be received by the jury with caution and be carefully scrutinized.

"5. No crime under the indictment in question could take place until Alice Speed Stoll was transported, taken, or carried away in interstate commerce after first having been held for ransom or reward, by defendant, Thomas Henry Robinson, Jr.

"6. There must be evidence of substantial value that Alice Speed Stoll was transported, taken, or carried away, in interstate commerce after first having been held for ransom or reward, by defendant, Thomas Henry Robinson, Jr.

"6. There must be evidence of substantial value that Alice Speed Stoll was held for ransom or reward and while so held was transported, taken or carried away in interstate commerce; and that she was not a child of Thomas Henry Robinson, Jr.

"7. The death penalty may not be recommended in this case, and may not be imposed, prior, to the imposition of sentence upon defendant, Thomas Henry Robinson, Jr., Alice Speed Stoll was released unharmed, if you should believe that she was transported in interstate commerce after, first having been held for ransom or reward by defendant, Thomas Henry Robinson, Jr.

"8. There being a total absence of evidence of the physical condition of Alice Speed Stoll at the time of the trial of defendant, Thomas Henry Robinson, Jr., and likewise a total and complete lack of any evidence of her physical condition and whether or not she is in a harmed or unharmed physical condition at the time of imposition of sentence (if there is to be an imposition of sentence) upon

Bill of Exceptions

Thomas Henry Robinson, Jr., now the jury may not recommend any imposition of the death penalty in this case.

"9. If the facts as proven are as consistent with innocence, as they are of guilt, the defendant, Thomas Henry Robinson, Jr., must be acquitted.

"10. Defendant, Thomas Henry Robinson, Jr., cannot be found guilty, if the proven facts are consistent with innocence.

"11. The terms 'unlawfully did then and there knowingly transport and cause to be transported and carry away in interstate commerce, a person who had been unlawfully seized, kidnaped, abducted and carried away and held for ransom,' mean seizing and carrying away and holding for ransom contrary to law. If it was lawful or if Alice Speed Stoll went willingly, the defendant, Thomas Henry Robinson, Jr., must be acquitted.

"12. The questions you are to decide are whether the defendant on trial is guilty, first of unlawfully holding for ransom or reward Alice Speed Stoll, and secondly, of unlawfully transporting her in interstate commerce while so held. If you are not satisfied that Alice Speed Stoll was so held for ransom or reward or that she was transported in interstate commerce while being so held, you must acquit this defendant.

"13. If any of the elements set out in the foregoing charges 11 and 12 are missing, you must acquit the defendant.

"14. You are instructed as a matter of law that the defendant is presumed to be innocent. He is not required to prove himself innocent or to produce evidence at all on that subject. In considering the testimony, you must consider and view it in the light of this presumption with which the law clothes the defendant. It is a presumption that abides with him throughout the trial of the case until the evidence convinces each individual juror of his guilt beyond all reasonable doubt.

"15. The indictment is no evidence, and you should not consider it as such. It is merely an accusation which the Government, the plaintiff, is required to prove in every

Bill of Exceptions

detail, and the burden of proving every detail of the indictment is upon the Government.

“16. The defendant is not required to prove himself innocent or to produce evidence at all on the subject of his innocence. As a matter of strict logic, the jury should conclude from the fact that the defendant is presumed to be innocent and that the burden of proof is upon the Government that he, himself, is not required to prove innocence or to produce evidence.

“17. You are instructed as a matter of law that the burden of proof is always upon the prosecution. It is not sufficient to establish a probability, though a strong one, arising from the doctrine of chance, that the fact charged is more likely to be true than the contrary, but the evidence must establish the truth of the fact beyond a reasonable doubt.

“18. The burden of proving each essential element of the offense is placed upon the prosecution, and until each essential element is established to your satisfaction beyond any reasonable doubt, you can not return a verdict of guilty as indicted. You are instructed as a matter of law that before you would be justified in returning a verdict of guilty, you must find that the defendant committed not one, not some, but all and each and all of the acts charged against him as having by him been committed as charged in the indictment.

“19. If you believe beyond a reasonable doubt that the defendant is guilty of some of the acts charged in the indictment, but you have a reasonable doubt as to whether he is guilty beyond a reasonable doubt of each and all of the acts charged in the indictment, you cannot find him guilty of any of the acts so charged.

“20. Every material fact, whether direct or circumstantial, essential to the establishment of the guilt of the accused, must be proven to the satisfaction of the jury beyond all reasonable doubt.

“21. The accused, defendant herein, being charged with crime, is entitled to have benefit of all the principles of law, and the rules of practice and evidence, designed to safeguard life and liberty.

Bill of Exceptions

"22. Insanity as a defense: The jury is instructed that if they believe from the evidence that at the time of committing the acts, or any of them, charged in the indictment, the defendant, Thomas Henry Robinson, Jr., was suffering from such a perverted and deranged condition of his mental and moral faculties as rendered him incapable of distinguishing between right and wrong, or unconscious at such times or time of the nature of the acts, or any of them, charged in the indictment, while committing the same, or any of them, or where, though conscious of them, and able to distinguish between right and wrong and to know the acts were wrong, yet his will,—that is to say, the governing power of his mind, was, otherwise than voluntarily, so completely destroyed that his actions, or any of them, were not subjected to it, but were beyond his control; or, if you believe that at such time or times mentioned in the indictment, that said defendant was not able to understand or appreciate the nature or consequences of his acts, or any of them; or, if knowing and appreciating the nature and consequences of his acts, yet did not have or possess such will power to resist the impulse to do the acts, or any of them, mentioned in the indictment, it is your duty to acquit this defendant, and in such case your verdict shall be 'NOT GUILTY.'

"23. The defendant, Thomas Henry Robinson, Jr., was twice legally adjudicated insane, and had never been restored to sanity at the time of, or prior to the indictment. The presumption of his insanity exists and the Government is under the burden to prove that he was sane at the time of committing the acts charged in the indictment beyond a reasonable doubt. The burden is not upon this defendant to prove insanity and no presumption in this case exists that this defendant was sane at the time of the commission of the acts charged against this defendant in said indictment.

"24. The presumption does not exist that although this defendant was twice adjudicated insane, or that he was adjudicated insane, that time has eradicated the presumption of insanity. That presumption is never eradicated.

Bill of Exceptions

but must be proven by the Government beyond a reasonable doubt."

Thereupon counsel for the United States made request to the Court that the jury be charged as follows:

"1. That with reference to the testimony of Doctors Solomon and Crice that they were members of the Jefferson County Lunacy Commission, duly constituted under the laws of the State of Kentucky, that under the laws of the State of Kentucky there does not exist any office or any commission known as the Jefferson County Lunacy Commission or in other words which would connote a standing or official appointment as a member of a lunacy commission.

"2. That in a case of an appointment of a physician to examine an incompetent, that said appointment is for a single case and that a new order is drawn for each separate case."

Thereupon the cause was argued to the jury by counsel for the United States and by counsel for the defendant, after which the Court charged the jury as hereinbefore appears.

The above and foregoing bill of exceptions contains in detail and by reference all of the testimony and all proceedings had before the trial of Thomas Henry Robinson, Jr., had during the trial of Thomas Henry Robinson, Jr., and had on December 13, 1943, the day the said Thomas Henry Robinson, Jr. was sentenced by the District Judge.

Now, in furtherance of justice and that right may be done, the defendant Thomas Henry Robinson, Jr. presents the foregoing as and for his bill of exceptions in the above-entitled cause and prays that the same may be settled, allowed, signed and filed as such.

Robert E. Hogan,
Attorney for Thomas Henry
Robinson, Jr.

This is to certify that the foregoing bill of exceptions on behalf of the defendant Thomas Henry Robinson, Jr. in the above-entitled cause was served on me on the 11th day of February, 1944, and I agree that the same may be

Bill of Exceptions

settled and signed as a bill of exceptions in this cause by the Honorable Judge of said court.

Witness my hand this 11th day of February, 1944.

Eli H. Brown, III,
United States Attorney,
Western District of Kentucky.

I, Shackelford Miller, Jr., United States District Judge for the Western District of Kentucky, and the judge before whom the above-entitled cause was tried, do hereby certify that the foregoing bill of exceptions in the above-entitled cause contains all the proceedings had on the specific dates mentioned from September 28, 1943, to and including December 13, 1943, all the evidence offered, admitted or adduced, together with all objections made and exceptions allowed by and on behalf of the United States or the defendant Thomas Henry Robinson, Jr., together with the rulings thereon, and all avowals made and all exhibits introduced, and said bill is hereby ordered allowed, signed and settled as a true and correct bill of exceptions in said cause and made a part of said record.

Shackelford Miller, Jr.,
U. S. District Judge,
Western District of Kentucky.

February 18, 1944.

**MOTION TO TRANSMIT ORIGINAL EXHIBITS OR
PHOTOSTATIC COPIES TO CIRCUIT COURT OF
APPEALS**—Filed February 12, 1944.

Come the United States by counsel and the defendant by counsel, and move the Court for an order transmitting to the Circuit Court of Appeals for the Sixth Circuit all original exhibits or photostatic copies of said exhibits. The Court is informed that the exhibits are numerous and bulky, consisting of maps, photographs, records of institutions and corporations, and that it will be both expensive and impossible to include within the printed transcript of the record the said exhibits.

Eli H. Brown, III,
United States Attorney.
Robert E. Hogan,
Attorney for
Thomas Henry Robinson, Jr.

**ORDER TRANSMITTING ORIGINAL EXHIBITS OR
PHOTOSTATIC COPIES TO CIRCUIT COURT OF
APPEALS**—Entered by Judge Shackelford Miller, Jr.,
February 12, 1944.

Upon consideration of the joint motion of the United States and of the defendant,

It is Ordered that the original exhibits filed on the trial of the above-styled case, or photostatic or photographic copies of said exhibits which have been compared with the originals filed, be transmitted to the Sixth Circuit Court of Appeals for the Sixth Circuit for the consideration of that Court on the appeal of said case without the necessity of printing the exhibits in the transcript of the record.

ORDER APPROVING AND FILING BILL OF EXCEPTIONS—Entered by Judge Shackelford Miller, Jr., February 18, 1944.

This day came the defendant, Thomas Henry Robinson, Jr., by his attorney and tendered his Bill of Exceptions, and same having been examined is now approved, ordered filed and made a part of the record.

ORDER FILING EXHIBITS—Entered by Judge Shackelford Miller, Jr., February 24, 1944.

It appearing that Mrs. Roberta Gentry, official court reporter, has tendered to the Clerk of this Court all exhibits introduced on trial of the above cause, both on behalf of the Government and of the defendant,

It is hereby Ordered that all exhibits be marked "Filed" in the records of the Clerk of this Court, and on the appeal of this case, in conformity with the order transmitting the exhibits to the Sixth Circuit Court of Appeals, that the Clerk of this Court forward to the Clerk of the Sixth Circuit Court of Appeals all exhibits in this case.

INDEX TO EXHIBITS.

GOVERNMENT'S EXHIBITS:	PAGE	
	For Identification.	In Evidence
G-1		380
G-2, 3, 4, 5, 6, 7, 8, 9, 10.	381	383
G-11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23.		389
G-24		396
G-25		408
G-26		424, 1019
G-27	434	435, 1019
G-28	434	435, 1019
G-29		440
G-30		506
G-31		508
G-32		511
G-33	609	1019, 710
G-34		622
G-35		678
G-36		682
G-37		685
G-38		688
G-39		691
G-40		694
G-41		696
G-42		721
G-43		729
G-44		738
G-45		762
G-46		773, 1019
G-47		822, 1019
G-48		825, 1019
G-49		831, 1019
G-50		850, 1019
G-51		864, 1019
G-52		1019
G-53		878, 1019

*Page numbers refer to original stenographic transcript of evidence.

Index to Exhibits

GOVERNMENT'S EXHIBITS:	PAGE	
	For Identification	In Evidence
G-54		885, 1019
G-55		888, 1019
G-56		892, 1019
G-57		892
G-58		899
G-59		907, 1019
G-60		915, 1019
G-61		920
G-62		926, 1019
G-63		928, 1019
G-64		932, 1019
G-65		933, 1019
G-66		937, 1019
G-67		937
G-68-a and -b	951	975
G-69	951	957
G-70-a and -b		963
G-71-a, -b, -c, -d, -e, -f		963
G-71g and -h		970
G-72-a, -b, -c, -d, -e, -f, -g		970
G-72-h, -i, -j, -k, -l, -m		971
G-73-a, -b, -c, -d, -e, -f, -g, -h, -i, -j, -k, -l		971
G-73-m, and -n		972
G-74-a, -b, -c, -d, -e, -f, -g, -h		972
G-75-a, -b, -c, -d, -e, -f		972
G-75-g and -h		973
G-76	1023	1036
G-77		1167
G-78		1189
G-79		1190
G-80		1230
G-81	1721	1736
G-82		1763
G-83		1842
G-84		1842
G-85		1842

Index to Exhibits

	PAGE	
	For Identification	In Evidence
GOVERNMENT'S EXHIBITS:		
G-86		1846
G-87		1846
G-88-a, -b and -c		1926
 DEFENDANT'S EXHIBITS:		
D-1		572
D-2		573
D-3		574
D-4, 5, 6, 7, 8, 9, 10, 11, 12, 13.		787
D-14		1087
D-15		1088
D-16		1157
D-17		1412
D-18		1426
D-19		1430
D-21		1929

DOCKET ENTRIES.

Oct. 20, 1934—Indictment returned and filed.

Sept. 28, 1943—Petition for Writ of Habeas Corpus granted by U. S. Dist. of Calif. Sou. Div. Aug. 9, 1943—Thos. Robinson, Jr. delivered to U. S. Marshal, Lou., Ky.

Sept. 28, 1943—Thomas Henry Robinson, Jr. brought into open court in custody of U. S. Marshal. Asked the Court to appoint 2 attorneys. Robert E. Hogan and J. Paul Keith, Jr. appointed.

Deft. objected to Robert E. Hogan.

Court recessed to later in day.

Docket Entries

Sept. 28, 1943—At 11 a. m. Court reconvened and deft. appeared with counsel R. E. Hogan and announced that after discussing matter with counsel, appointment of counsel was satisfactory.

Case passed for arraignment to Sept. 30, 1943 at 10 o'clock a. m.

Deft. committed to Jefferson county jail.

Sept. 30, 1943—Eli H. Brown, III and J. D. Inman, for U. S. Deft. and counsel stated no claim as to insanity would be made now but such plea would be made later on Formal arraignment.

Written application for appointment of 2 attorneys filed, asking to proceed and defend this case in forma pauperis—affidavit in forma pauperis filed.

Plea in abatement filed.

J. Paul Keith, Jr. asked permission to withdraw as counsel.

Deft. consented to proceed with 1 attorney for present.

J. Paul Keith, Jr. permitted to withdraw.

Plea in abatement passed for argument to Oct. 6, 1943, 10 a. m.

Oct. 5, 1943—Motion to strike Plea in Abatement filed by U. S. with supporting affidavits.

Motion for appointment of psychiatrists filed by U. S.

Memorandum of Authorities on Motion to strike filed by U. S.

Additional memorandum on Motion to strike filed by U. S.

Oct. 6, 1943—Motion filed by deft. for order allowing deft. to inquire into evidence of Grand Jury returning this indictment.

Affidavit filed by deft's counsel in support of motion.

Memo of decisions in support of deft's plea in abatement filed.

Docket Entries

- Oct. 6, 1943—Motion by deft. for Rule to compel U. S. to reply to Plea in Abatement.
 Deft's motion to strike plaintiff's motion for appointment of psychiatrists filed.
 Deft's Motion to dismiss filed.
 Deft's Motion to elect filed.
 Deft's Demurrer filed.
 Deft's Waiver as to Sanity filed.
 Order that U. S. Motion to strike sufficient ans. to Motion for Rule—exc. for deft.
 Order overruling motion to strike as to appt. of psychiatrists—exc. for deft.
 Order appointing psychiatrists.
 Order overruling Deft's Motion to elect—exc. for deft.
 Order overruling Deft's Demurrer—exc. for deft.
 Order overruling Motion to dismiss—exc. for deft.
 Order overruling Motion to procure affidavits from Grand Jurors.
 Order overruling deft's oral motion for bail.
 1 U. S. praecipe filed—issd. 1 subpoena—executed.
 Order sustaining U. S. Motion to strike deft's plea in abatement.
 Order permitting deft. to proceed in forma pauperis.
- Oct. 13, 1943—Eli H. Brown, III, U. S. Dist. Atty. for U. S.
 Thomas Henry Robinson, Jr. in person and by his counsel Robert E. Hogan.
 Court stated psychiatrists reported defendant mentally sound and competent.
 Deft. waived reading of indictment.
 Plea not guilty.
 Assigned to Nov. 29, 1943, for trial * * *
- Nov. 9, 1943—Deft's Motion for Order of personal attendance of Dr. Leon Solomon and Dr. Thomas J. Crice filed.

Docket Entries

- Nov. 9, 1943—Supporting affidavit filed.
 Motion sustained—Order personal attendance granted Court to set fee later (at exp. of U. S.).
- Nov. 24, 1943—Defts. Motion for subpoenas for witnesses filed.
 Defts. Affidavit (forma pauperis) filed.
 Order overruling defts. motion for witnesses with exceptions to deft. U. S. to subpoena same witnesses.
- Nov. 27, 1943—Affidavit of Harold Hall, Dep. U. S. Marshal as to service of list of jurors and witnesses on deft. and his counsel filed.
- Nov. 29, 1943—Order for 2 additional jurors as alternates.
 9:30 a. m. Eli H. Brown III and J. D. Inman for U. S.
 Robert E. Hogan for deft.
 Both sides announced ready for trial.
 12 Jurors called and count 2 of the Indictment stated to them by the Court.
 Jurors questioned by Mr. Brown and Mr. Hogan.
 Jury sworn to answer questions—admonished.
 Adjourned at 9:30 p. m. to Nov. 30, 1943, 9:30 a. m.
- Nov. 30, 1943—12 jurors selected and sworn—9:30 a. m.
 2 p. m. 1 alternate juror sworn.
 Deputy marshals and special bailiff sworn to guard jury.
 Opening statement by J. D. Inman.
 Statement reserved by defts. counsel.
 Evidence for U. S. Begun.
 At close of night session jury admonished and case cont. to Dec. 1, 1943—9:30 a. m.
- Dec. 1, 1943—Court reconvened and evidence for U. S. resumed.
 Adjourned at 5:30 p. m. to Dec. 2, 1943—9:30 a. m.

Docket Entries

- Dec. 2, 1943—Court reconvened—evidence for U. S. resumed.
Adjourned at 5:30 p. m. to Dec. 3, 1943—9:30 a. m.
- Dec. 3, 1943—Court reconvened. Evidence for U. S. resumed.
Adjourned until Dec. 4, 1943—9:30 a. m.
- Dec. 4, 1943—Court reconvened—Evidence for U. S. concluded.
Adjourned at 12:45 p. m. until Dec. 6, 1943—9:30 a. m.
- Dec. 6, 1943—Court reconvened.
Motion to strike and exclude Govt. exhibits—ruling reserved.
Motion for directed verdict by deft. filed—overruled exc.
Defendant's evidence introduced.
Adjourned to Dec. 7, 1943—9:30 a. m.
- Dec. 7, 1943—Court reconvened—evidence for deft. resumed.
Adjourned to Dec. 8, 1943—9:30 a. m.
- Dec. 8, 1943—Court reconvened at 9:30 a. m. and recessed to 2:30 p. m. on account illness of 2 jurors. At 2 p. m. Court reconvened—1 juror absent.
Alternate juror was directed by Court to take the place of absent juror.
Evidence for deft. resumed.
Absent juror discharged by Court.
Motion and affidavit for personal attendance of Dr. H. B. Brackin filed by deft. and for payment of fees and expenses to be paid by U. S.
Court adjourned at 9:40 p. m. until 9:30 a. m. Dec. 9, 1943.
- Dec. 9, 1943—Court reconvened and evidence for deft. resumed.
Adjourned until 9:30 a. m. Dec. 10, 1943.
- Dec. 10, 1943—Court reconvened and evidence for deft. resumed.

Docket Entries

Dec. 10, 1943—Defense rests.

Rebuttal evidence for U. S.

At 10 p. m. adjourned until Dec. 11, 1943,
9:30 a. m.

Dec. 11, 1943—Court reconvened—evidence for deft. in rebuttal heard—motion for directed verdict at close of case.

Case argued by Mr. Inman, Mr. Hogan and Mr. Brown.

Request to charge jury filed by U. S. and deft.

Jury instructed—retired.

Verdict “guilty” with recommendation of death penalty.

Judgment suspended until Dec. 13, 1943.

Dec. 13, 1943—Defts. Motion in arrest of judgment filed.
Judgment.

“Death penalty.”

to be executed Friday, March 10, 1944, at State Penal Inst., Eddyville, Ky.

Motion and Grounds for new trial filed.

Dec. 14, 1943—Application for leave to proceed in forma pauperis filed—affidavits filed.

Additional Grounds for new trial filed.

Dec. 16, 1943—Response of U. S. to certain portions of Motion and Grounds for new trial filed.

Notice of Appeal to U. S. Circ. Ct. of Appeals filed.

Return on same served on Eli H. Brown III by U. S. Marshal.

Notice and Grounds of Appeals filed—filing notice accepted by Dist. Atty.

Order sustaining application to proceed in forma pauperis.

Order overruling Motion and Grounds for new trial.

Dec. 20, 1943—Notice of defts. motion for supersedeas and fixing of bond pending appeal and defts. objection to removal from Jefferson Co. Jail pending appeal and deft. does not

Docket Entries

- Dec. 20, 1943—elect to begin service of sentence—filed.
Served on Eli H. Brown III by Louis Lotze.
- Motion of deft. for staying and suspending execution and for supersedeas, and order fixing bail and discharging deft. from custody pending appeal, filed.
- Order staying and suspending execution—appeal allowed—considered supersedeas.
- Receipt of att. copy by L. E. Cranor, U. S. Marshal.
- Order overruling Motion for Bond—obj. and exc.
- Dec. 21, 1943—Order filing written report of psychiatrists.
- Jan. 6, 1944—Motion & affidavit for extension of time for filing Assignment of Errors & Bill of Exceptions filed.
- Order giving extension to 4:30 p. m. Feb. 19, 1944.
- Motion & affidavit for time to file Record on Appeal & docketing action filed.
- Order extending time to March 10-1944.
- Order filing Designation of Contents of Record on Appeal.
- Jan. 11, 1944—Order directing expense of printing record on appeal to be paid by U. S. when authorized by Atty. Gen. (Title 28—sec. 832 U. S. C.).
- Feb. 12, 1944—Motion for Order transmitting all original exhibits or photostatic copies to U. S. Circ. Court of Appeals 6th Circ, filed.
- Order transmitting original exhibits or photostatic copies entered.
- Feb. 18, 1944—Assignment of errors filed—Order.
Bill of Exceptions approved and filed—Order.
- Feb. 21, 1944—Order received from U. S. Circ. Court of Appeals granting appellant leave to proceed in forma pauperis (Feb. 18-1944).
- Feb. 24, 1944—Order filing exhibits.

CLERK'S CERTIFICATE.

I, W. T. Beckham, Clerk of the United States District Court for the Western District of Kentucky, do hereby certify that the foregoing 1567 pages constitute a true, full and complete transcript of the record of proceedings had in this court in the case of United States of America vs. Thomas Henry Robinson, Jr., Criminal Case No. 18917, as same appears of record and on file in my said office and as provided in the Designation of Record on Appeal, filed herein on January 6, 1944.

Witness my hand and seal of this court this _____ day of March, 1944.

(Seal)

W. T. Beckham,
Clerk, United States District Court,
Western District of Kentucky.

[fol. 1569] IN THE UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE SIXTH CIRCUIT

CAUSE ARGUED AND SUBMITTED—June 5, 1944

(Before Hicks, Allen and Martin, JJ.)

This cause is argued by Robert E. Hogan for Appellant and by Eli H. Brown, III, for Appellee and is submitted to the court.

IN UNITED STATES CIRCUIT COURT OF APPEALS

JUDGMENT—Entered July 31, 1944

Appeal from the District Court of the United States for the Western District of Kentucky.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Kentucky, and was argued by counsel.

On Consideration Whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby affirmed.

{fols. 1570-1571} OPINION—Filed July 31, 1944

No. 9754

**UNITED STATES CIRCUIT COURT OF APPEALS
SIXTH CIRCUIT**

THOMAS HENRY ROBINSON, JR.,

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

APPEAL from the
United States Dis-
trict Court for the
Western District
of Kentucky.

Decided July 31, 1944.

Before HICKS, ALLEN and MARTIN, Circuit Judges.

HICKS, Circuit Judge. On October 20, 1934, a grand jury returned an indictment, containing two counts, against appellant, his wife and father, charging them with kidnaping Mrs. Alice Stoll on October 10, 1934, in violation of Sec. 408a of Title 18 U. S. C., and with a conspiracy to kidnap Mrs. Stoll. Sec. 408c Title 18 U. S. C. While appellant was at large his codefendants were tried and acquitted on both counts.

Appellant was apprehended by the FBI in Glendale, Calif., on May 11, 1936, waived removal proceedings, was brought by airplane to Louisville, Kentucky, where the alleged kidnaping occurred, and on May 13, 1936, was arraigned in the United States District Court for the Western District of Kentucky on the kidnaping count only, plead guilty and the court sentenced him to imprisonment for life. He was incarcerated in the Federal Penitentiary at Atlanta, was later transferred to the Federal Penitentiary at Leavenworth, and from there he was transferred to the Federal Penitentiary on Alcatraz Island, California.

In 1940, while appellant was serving his sentence in Alcatraz, he applied to the District Court for the Northern District of California for a writ of habeas corpus,

which was denied. He appealed to the Circuit Court of Appeals, where the order of the lower court was affirmed. See *Robinson v. Johnston, Warden*, 118 Fed. (2d) 998 (C. C. A. 9). The Supreme Court granted certiorari and remanded the case to the Circuit Court of Appeals for further proceedings. See *United States ex rel. Robinson v. Johnston, Warden*, 316 U. S. 649. Thereupon that court reversed the order of the District Court and remanded the case with directions to issue the writ of habeas corpus and proceed to a hearing upon the merits. *Robinson v. Johnston, Warden*, 130 Fed. (2d) 202 (C. C. A. 9). After a hearing the District Court found that appellant did not intelligently waive counsel when he plead guilty in the District Court for the Western District of Kentucky, and therefore that that court was without jurisdiction, and that the judgment and sentence of life imprisonment were illegal and void. The California District Court followed *Johnson v. Zerbst, Warden*, 304 U. S. 458, 468, and granted the writ of habeas corpus [*Robinson v. Johnston, Warden*, 50 Fed. Supp. 774 (D. C.)] but directed that appellant be returned to the Kentucky District Court for further proceedings upon the indictment.

Pursuant to that order, appellant was returned to Louisville, was brought into court, where counsel of his own choosing was appointed for him, and upon his formal arraignment upon the kidnaping count of the indictment, he plead not guilty. Upon his trial he was convicted and the death penalty imposed. Hence this appeal.

Among the errors assigned, appellant complains that the District Court should have declared Section 408a of Title 18 U. S. C. [the Lindbergh Act] to be unconstitutional; that it should have sustained his demurrer to the indictment on the ground that it was too indefinite and uncertain; that appellant was subjected to double jeopardy; that he was denied the benefit of statutory removal proceedings; that there was error in the selection of the jury; that his motion for a directed verdict should have been sustained; that the court erred in admitting certain testimony and exhibits; that it erred in the instructions to the jury and in denying certain requests for instructions; that the court's manner in charging the jury was prejudicial; that he was convicted and sentenced for what he testified of and concerning Mrs. Stoll; that the District Attorney and his Assistant made prejudicial remarks to the jury in argument; that the court erred in refusing to permit Mrs. Ann Woollet to be

impeached; and finally, that his motion for a new trial should have been sustained.

We examine first appellant's complaint, made for the first time in the assignments of error, that the order of the California District Court, directing him to be returned to the Kentucky District Court, was in contravention of the provisions of the Removal Statute, Sec. 591 of Title 18 U. S. C. The contention fails for two reasons; (1) it comes too late; and (2) it is immaterial. The presence of appellant in the Kentucky District Court gave it complete jurisdiction over his person, regardless of how his presence was secured. See *Albrecht v. United States*, 273 U. S. 1, 10; *Stamphill v. Johnston*, 136 Fed. (2d) 291, 292 (C. C. A. 9).

Appellant contends that Sec. 408(a), Title 18 U. S. C., is unconstitutional in that it violates both the Fifth and Sixth Amendments. The Section follows:

"Whoever shall knowingly transport or cause to be transported, or aid or abet in transporting, in interstate or foreign commerce, any person who shall have been unlawfully seized, confined, inveigled, decoyed, kidnaped, abducted, or carried away by any means whatsoever and held for ransom or reward or otherwise, except, in the case of a minor, by a parent thereof, shall, upon conviction be punished (1) by death if the verdict of the jury shall so recommend, *provided that the sentence of death shall not be imposed by the court if, prior to its imposition, the kidnaped person has been liberated unharmed*, or (2) if the death penalty shall not apply ~~nor~~ be imposed the convicted person shall be punished by imprisonment in the penitentiary for such term of years as the court in its discretion shall determine. . . ."

We have underscored that portion which allegedly contravenes the indicated amendments. The criticism of these provisions is that they are too vague, uncertain and indefinite to form the basis of a valid indictment. The short answer is, that the provisions do not constitute an element or ingredient of the offenses denounced in Sec. 408a. They relate to the punishment and there is nothing in the Constitution which grants the accused the right to be informed of the punishment that may be inflicted upon him by law. The offense is the subject of an indictment, not the punishment. The punishment is the remedy the law provides, and is not, except perhaps in exceptional

cases, to be set forth in the indictment. See *Bishop on Criminal Law*, 3rd ed., Vol. I, Sec. 204.

Appellant filed a demurrer to the indictment which is in most general terms, but since the case involves the death penalty, we regard it our duty to consider in detail the specific criticisms of the indictment as set forth in brief and argument.

It is contended that the kidnaping count did not allege, that Mrs. Stoll was not liberated from appellant's custody unharmed. This count not only charged the statutory elements of the offense, to wit, that the defendants named therein kidnaped Mrs. Stoll and transported her in interstate commerce and held her for ransom, but it went further and alleged, that while she was in their custody they did "beat, injure, bruise and harm and aid and abet each other in beating, injuring, bruising and harming the said Mrs. Alice Stoll and did not liberate her unharmed." It is manifest, therefore, that the demurrer, as to this feature, is a "speaking demurrer" and is bad.

But appellant goes further and alleges, that the phrase "and did not liberate her unharmed" was too indefinite as a basis for the indictment; that the word "harmed" admits of varying degrees of meaning from slight to grave, and that appellant was entitled to be advised by the indictment as to what particular injuries the Government would insist had been inflicted upon Mrs. Stoll at or before the time she was liberated. We again point out that the phrase "and did not liberate her unharmed" did not state an essential part of the offense charged. Appellant might have been convicted without any showing that Mrs. Stoll was liberated at all; or, if she was, whether she was set free either sound or unsound, in mind or body. The punishment provided by the statute varied from imprisonment from one year to life, in the discretion of the court, or to a death sentence "if the verdict of the jury should so recommend," and in determining whether it would recommend capital punishment, the jury was entitled to know from the evidence to what extent aggravation was involved. It was for this reason, no doubt, that the phrase "provided that the sentence of death shall not be imposed by the court, if prior to its imposition the kidnaped person has been liberated unharmed" was incorporated in both the statute and the indictment. It furnishes a basis for proof as to what extent the offense was aggravated. See *Seadlund v. United States*, 97 Fed. (2d) 742, 748 (C. C. A. 7). In the light of the purpose intended, there is no merit in the contention that the language "liberated unharmed" is

too indefinite and uncertain. This language carried no ambiguous meaning. If we should assume ambiguity, it is completely negatived by the averments that Mrs. Stoll was beaten, bruised and injured. It follows logically that there is no merit in Assignment #16 that the court erred in admitting the testimony of various witnesses as to Mrs. Stoll's physical condition when she was released.

Appellant complains that he has been placed in double jeopardy, in contravention of the Fifth Amendment. This contention cannot be sustained for two reasons: (1) because, as hereinabove indicated, it has been judicially determined that the original judgment and sentence by the Kentucky District Court were not a judgment and sentence at all; and (2) because the original judgment and sentence having been declared void at his insistence, appellant may not later introduce it as a hindrance to the further administration of justice. *Bryant v. United States*, 214 Fed. 51, 53 (C. C. A. 8); *King v. United States*, 98 Fed. (2d) 291, 295 (C. A.-D. C.). As pointed out in the Bryant case, it is not material that appellant attacked the original judgment and sentence collaterally by habeas corpus instead of directly by appeal.

After the jury was impanelled, but before it was sworn, it appeared that the trial was likely to be protracted and the court ordered that two additional jurors be selected as alternates, under the provisions of Sec. 417a of Title 28 U. S. C. By agreement, one juror only, C. E. Miller, was selected as an alternate and was seated adjacent to the jury box. Before the jury and the alternate were sworn, appellant's counsel objected to the alternate but withdrew the objection upon his attention being called to the fact that he had agreed to take no such exception. The jury and the alternate were sworn and the trial proceeded. During its progress, Mrs. Davidson, a juror, became ill and unable to continue. She was discharged and Mr. Miller, the alternate, without objection, took her place in the box. Appellant, in the assignment of errors, for the first time insisted that Miller's participation as a juror was unlawful because the statute, under which he was selected, was an invasion of appellant's constitutional right to trial by a jury of twelve, as provided by the Sixth Amendment, and by Article II, Sec. 2, Cl. 3 of the Constitution.

We find no merit in appellant's contention, first, because it appears that he was tried by an impartial jury of twelve. Miller was a competent juror, was unchallenged upon any ground of personal disqualification, sat next to the jury box until he was substituted as a regular

juror, and then took his place as such. He saw and heard all the proceedings of the trial and was segregated with the other jurors, and there is nothing to indicate that his participation in the deliberations of the jury was prejudicial. He obeyed the orders and admonitions of the court, just as did the other jurors. This is the first attack upon the constitutionality of the Act in question and we find no reason to think that it is unconstitutional. It is a forward looking statute and a needed reform in procedure. A similar statute has been upheld by the Supreme Court of North Carolina in *State v. Dalton*, 206 N. C. 507.

Second, appellant undoubtedly waived his right to trial by the jury originally impanelled and consented to the substitution of the alternate and there is no constitutional inhibition against such waiver. In *Patton v. United States*, 281 U. S. 276, the question certified was as follows:

"The Court below, being in doubt as to the law applicable to the situation thus presented, and desiring the instructions of this court, has certified the following question:

"After the commencement of a trial in a Federal Court before a jury of twelve men upon an indictment charging a crime, punishment for which may involve a penitentiary sentence, if one juror becomes incapacitated and unable to further proceed with his work as a juror, can defendant or defendants and the Government through its official representative in charge of the case consent to the trial proceeding to a finality with eleven jurors, and can defendant or defendants thus waive the right to a trial and verdict by a constitutional jury of twelve men?"

This question was answered in the affirmative. If a defendant can validly consent to a trial by eleven jurors, when the twelfth becomes incapacitated, we can perceive no valid objection, if he should consent to a trial by twelve jurors, one of whom was an alternate impanelled in accordance with the statute. See also *Adams v. United States ex rel. McCann*, 317 U. S. 269.

Appellant claims that the court erroneously denied him the right to challenge for cause the following proposed jurors, to wit, Allen, Ballard, Sutcliff, Van Cleave and Eastes, and that he was compelled to use five of his statutory challenges upon these jurors. It was the duty of the court [Title 28, Sec. 424 U. S. C.] to determine appellant's right to challenge for cause. Our duty is limited

to the question whether there was manifest error in denying the challenges. *Reynolds v. United States*, 98 U. S. 145, 156. We cannot within reasonable limits review the evidence upon these questions. In the case of juror Allen, it related to his business connections with the Government. In the case of the other four, it touched upon reported relationships to and contacts with Mrs. Stoll and her family.

We conclude that there was no abuse of judicial discretion in denying the challenges. It is not manifest, as a matter of law, that they should have been sustained. Moreover, we do not think that their denial resulted prejudicially for the jury selected was so far as we can determine, fair, and impartial. See *Simpson v. United States*, 184 Fed. 817 (C. C. A. 8) and cases there cited.

Appellant challenges the denial of his motion for a directed verdict. Under his plea of not guilty he relied upon the defense that he was insane prior to, at the time and subsequent to, the alleged offense. There is therefore involved, not only the question whether there was substantial evidence that he kidnaped Mrs. Stoll, transported her in interstate commerce and held her for ransom, but, if so, also the question, whether he was mentally responsible for his acts.

At the trial appellant expressly waived any contention "that he is now insane." That he was not then insane is borne out by the report of a committee of four psychiatrists, who examined appellant by direction of the court. This report, dated October 11, 1943, concluded, "The diagnosis in this case is, 'without psychosis.' This term is used by psychiatrists to signify that an individual is not insane and that he does not suffer from any form of mental disorder which would render him incompetent and irresponsible."

Appellant was born in 1907 of indulgent and well-to-do parents at Nashville, Tenn., and was reared and educated there. He had the usual run of children's diseases, plus an aggravated attack of malaria when he was fourteen. This was followed by tuberculosis for which he was hospitalized at the age of fifteen for approximately a year. Following his release his mother gave him a Buick coupe. He went to the Ross and Wallace Schools and then to Vanderbilt Law School, where he studied for two and a half years, making excellent grades and lacking only two or three subjects of completing the course. While at Vanderbilt he moved in good society, was a member of two fraternities, and participated actively in school functions.

He testified that when he was twenty years old, he was forced to marry a "casual pick-up," with whom he had been sexually intimate over a period of less than seven months, and that shortly after the marriage she gave birth to a nine months' baby. Some time later he obtained a divorce on the ground that the marriage had been procured by fraud, but he testified that the incidental embarrassment and scandal disturbed him; that he withdrew into himself, severed his social contacts and eventually quit the law school.

Appellant testified that after leaving Vanderbilt he worked four or five months for a lumber company and was discharged for neglect of duty. He married a second time, January 9, 1929, and a child was born on August 31st of the same year. In March 1929 he entered two homes in Nashville on the pretense of being a deputy sheriff and stole jewelry worth several thousand dollars, and in one instance, drove away in the owner's car. He borrowed money on these jewels at a Nashville bank. In May 1929 he was indicted for these offenses. He plead "present insanity" and upon a finding by a jury that he was insane at that time, he was committed to the Central State Hospital for the Insane where he remained about a year. The indictments were dismissed in May 1930, but appellant's father brought lunacy proceedings against him in the County Court of Davidson County, where upon a finding by a jury that appellant was of unsound mind, he was again committed to the Central State Hospital and afterwards transferred to the Western State Hospital at Bolivar, where he could get more fresh air, sunshine and exercise, and he remained there until August 1930, when his father, who had been appointed his Guardian, insisted upon removing him, and assumed full responsibility for his welfare.

Dr. Cocke, Medical Superintendent at the Western Hospital, testified that the Examiners at the Central Hospital diagnosed appellant's case as dementia praecox, but that his own staff diagnosed him as a psychiatric personality, which meant that he was not insane but incapable of meeting the demands of his environment. Dr. Cocke testified that since appellant was not insane, he could not legally hold him in the hospital, although he was of the opinion that it was best for him to stay there; that he was dissatisfied, would not come under discipline, and was difficult to control; that he would violate regulations, was unstable and incapable of going out into the world and assuming the responsibilities of life. In a letter to the State Commissioner of Institutions on Sep-

tember 4, 1930, Dr. Cocke wrote of appellant, "He knows right from wrong as any normal person would but he is just one of those types that cannot resist the temptation of doing wrong and committing crimes. I insisted on Mr. Robinson keeping the boy here but he thought otherwise. It seems that they" (referring to the parents) "won't stand for the boy to be disciplined and without discipline or institutionalization the boy will never make the grade."

Following his release, appellant and his family spent some time at his parents' home, where it is in evidence that he struck his mother, threatened to kill his father, and showed great jealousy of his wife. He found the stigma of insanity worse than the disgrace of a forced marriage. He testified that he quit going to church because he felt the preachers were preaching directly at him; that in the hospital he felt the doctors were against him; that he felt he was the reincarnation of Patrick Henry and should have a high place in national affairs. He had difficulty in getting a job. He worked for the Servel Company for one day in May 1931, and left because he was dissatisfied. Through family connections he got a job at a filling station with the Stoll Oil Company in Louisville, and held it from June 1, to July 10, 1931, when he quit to become a collector for an insurance company for two months. For almost two months in 1932, he solicited for a business school in Nashville and then went to Winnetka, Ill., for a few months to sell oil burners. From January to April, 1933, he was maintenance man at an apartment in South Bend, Ind. In 1934, he was employed at the DuPont plant in Nashville and was temporarily discharged in May because in his application for bond he failed to disclose his insanity record.

Appellant testified that shortly thereafter he left Nashville and he was faced by two girls with what he called false charges of robbery at a night club. He denied that he told the Attorney General that if those girls testified against him he would "spear them all over the papers of Nashville." However, on cross-examination the Attorney General, a witness for appellant, testified that appellant said he was not fearful of prosecution because he would testify that they had sexual relationship with him and he would ruin their reputation.

Appellant claims that in 1934 he again sought employment from C. C. Stoll, or the Stoll Oil Company, in Louisville, but was told that it was the policy of the Company not to rehire persons who had quit. He claims that he got

the idea, when he was trying to get employment in Chicago, that Mr. Stoll was giving him a bad reputation and was preventing him from getting a job. He claims to have brooded over this and felt that Mr. Stoll was a powerful capitalist and a menace to the country and responsible for the depression.

However, appellant did obtain employment as night janitor in a building in Oak Park, Chicago, from June to August 18th. This was his last job. Upon leaving there he and his wife moved to Magnolia Avenue in Chicago and took up life under an assumed name. Four weeks later he rented a car from the Saunders U-Driv-It Company to move to the south side of Chicago but instead of stopping there he and his wife drove to Indianapolis and in the first week of September he rented an apartment under the name of Thomas W. Kennedy at 2735 North Meridian Street, which was used as the hide-out for the alleged kidnaping which followed.

This, then, is the confused and desultory pattern of appellant's life prior to the offense with which he is charged.

Appellant claims that while in Indianapolis he tried to secure employment and that his failure to do so accentuated his feeling toward C. C. Stoll and that he prepared a ransom note with the idea of kidnaping him. He purchased a pistol and early in October, still using the U-Driv-It car, he and his wife drove to Louisville, where on October 8th, he registered at the Tyler Hotel. His wife went on to Nashville by train. On October 9th he gained entry to the home of C. C. Stoll on a pretense of being a telephone repairman and not finding him in, went to the home of George Stoll and entered it under the same guise. George Stoll was not there and appellant gave up the quest and went back to the hotel.

On the next afternoon, appellant went to the Berry Stoll home with the purpose in mind of kidnaping Berry Stoll, the husband of Mrs. Alice Stoll, and the son of C. C. Stoll. He entered the home by the same ruse and questioned Mrs. Ann Woollet, the maid, about the members of the household. He thus discovered that there was no chauffeur and that a colored workman had left. Mrs. Woollet testified that he went to the garage and seemingly checked the wires there, then asked about the extension on the second floor and asked the maid to come to that floor to help him check it. His actions were not suspicious since the Stolls had been having trouble with their telephone. Mrs. Stoll nursing a cold, was dressed but wearing a kimono, and was in her bedroom where the phone

was located. When Mrs. Woollet advised her that the repairman wanted to check it, she moved to the guest room. The maid testified that soon after she entered the bedroom where appellant was, he dropped his screw driver, put a gun to her back and told her to go to the room where Mrs. Stoll was.

There is a sharp conflict in the evidence as to what happened in the guest room. Appellant testified that he had become acquainted with Mrs. Stoll in 1931 when he worked at the Stoll filing station, because she frequently parked her car there; that a flirtation ensued and that on four different occasions they engaged in sexual intercourse, once on a secluded lane leading to the Rose Island Ferry, twice at the Beech Grove Tourist Camp on the Dixie Highway, where they registered as man and wife, and once in Indiana, on the outskirts of Jeffersonville, near the Log Cabin roadhouse, where they registered as man and wife and took one of the cottages in the rear. The record reveals that appellant and Mrs. Stoll could not have registered at the Beech Grove Tourist Camp at the times testified to by appellant for the compelling reason that it did not then exist as a tourist camp.

He testified that when he went into the guest room Mrs. Stoll smiled and said, "What are you doing here?" and that he replied, "I have come to kidnap Berry Stoll." His testimony is that they talked for an hour and that she told him he could not get away with it; that she offered him a check, which he refused; that she was afraid for her husband to find him in the house and suggested that she go herself and that she would help him get the money if he would give her half of it. He denied that he threatened either Mrs. Stoll or Mrs. Woollet, with a pistol, but testified that he had left the pistol in the glove compartment of the car. He testified that he had tied Mrs. Stoll's hands loosely with wire but that when she decided to go, she took the wire off her wrists and got her coat; that they went down the stairs together and that she got in the back of the car and kneeled down because she was afraid that they would meet her husband on the road.

Mrs. Stoll, who from the witness stand identified appellant as the kidnaper, testified that when the maid opened the door to the guest room appellant followed, holding a gun at her back. She said, "What are you doing in here?" and he replied that he had come to kidnap her. She testified that she tried to dissuade him by telling him that her father, Wm. Speed, had had bank losses and was not wealthy, but that her arguments were of no

avail. She testified that when appellant laid his gun on the bed for a minute, intending to tie her hands, she made a grab for it and that he hit her on the forehead with an iron pipe, causing a fracture. She continued to resist and made a move to go to her bedroom for a gun and he hit her again over the right ear so hard that she fell over on the bed, dazed and bleeding.

Mrs. Stoll testified that while he held the gun on both of them, he ordered the maid to bind her (Mrs. Stoll's) wrists with wire. The maid was then bound hand and foot with wire and Mrs. Stoll testified that before leaving the guest room appellant put adhesive tape over her mouth so that she couldn't open it; that she was allowed to get her coat and was ordered to the car, appellant walking behind her with the gun. Her testimony was that when she got to the car she was ordered to lie down on the floor in front of the back seat; that her feet were bound and she was covered with a blanket and newspapers. She further testified that after appellant threatened to kill her husband if he arrived while appellant was still there, she didn't resist any further and became anxious to get away before he came home.

Mrs. Woollet's direct testimony as to what took place in the guest room was substantially similar to that of Mrs. Stoll. She added that the pipe with which appellant struck Mrs. Stoll was wrapped in paper and the pipe itself was introduced as a physical exhibit. She testified that appellant had brought the wire and the adhesive tape with him, and after she had unbound her ankles, she went to the telephone and found that it had been disconnected.

On cross-examination Mrs. Stoll denied emphatically that she had known appellant when he was employed at the Stoll filling station; that he had ever serviced her car, or that she had ever seen or talked to him before the day of the kidnaping.

It thus appears that the testimony of appellant on the one hand and of Mrs. Stoll and Mrs. Woollet on the other is contradictory, but contradictory evidence is not to be considered in determining the motion for a directed verdict. *Gunning v. Cooley*, 281 U. S. 90, 94; *Rockford v. Penna. Co.*, 174 Fed. 81, 83 (C. C. A. 6); *Minneapolis, etc. Ry. Co. v. Jos. Galvin*, 54 Fed. (2d) 202 (C. C. A. 6).

Several witnesses testified as to conditions in the room after the alleged abduction. There were blood stains on the pink coverlet of the bed, one the size of a large plate and the other as large as an ordinary saucer, and there were splotches of blood around the edges of the stains.

As to the ransom note: Mrs. Stoll testified that appellant did not display any ransom note in her presence nor any envelope in which it might be contained. Mrs. Woollet testified that when appellant left the guest room with Mrs. Stoll "he threw the ransom note on the bed and said 'you give this to Berry Stoll,' " but that she never touched it.

Berry Stoll testified that when he reached home, apparently about fifteen minutes after appellant and Mrs. Stoll had left, he ran in, saw the condition of the room, the large splotches of blood on the bed, the ransom note and a pipe wrapped in paper on the floor. Appellant's own testimony touching the ransom note was that while he was still in Indianapolis he had prepared a ransom note with the idea of abducting C. C. Stoll and that the note was made out in the name of C. C. Stoll; that when Mrs. Stoll suggested that he take her rather than her husband, and divide the ransom money, he told her the note was made out for only \$30,000.00 and that if she were to get half he would have to raise the amount on the ransom note; that he took the note out of his pocket and changed the amount from \$30,000.00 to \$50,000.00 in pencil and marked across it in pencil, "For Mrs. Stoll." He said that when he went over to tie the maid's feet the note fell out of his pocket.

Appellant's description of the changes on the ransom note fits like a glove the ransom note that was recovered in the Berry Stoll house. The note was typewritten and was made out in C. C. Stoll's name, with ransom fixed at \$30,000.00. On the envelope in very crude lettering in pencil appeared the notation "\$50,000 for Mrs. Stoll," and to the typed designation, "TO THE MEMBERS OF THE STOLL FAMILY" was added, "and Mr. Speed." Mr. Speed was Mrs. Stoll's father. At the top of the first sheet of the ransom note was crudely added by pen, "Intended for C. C. Stoll at first" and Mr. Speed's name was added in pencil to the salutation. On the second page at the top was added crudely in ink "Same for Mrs. Stoll except amount" and the designation "\$30,000 (thirty thousand dollars) was stricken and the figures and words "\$50,000 (fifty)" written above. The typed part of the note indicated that Mr. Stoll was to fill in blanks designating an intermediary in Nashville, Tenn. However, the instruction "(to be filled in by Mr. Stoll)" was scratched and the blank filled in in ink with the name of "T. H. Robinson 1716 Ashwood Ave." On account of its length we do not reproduce this ransom note. It is enough to say that it discloses a scheme, thorough in conception,

and that the writer was "fully aware" of the Lindbergh Act.

Mrs. Stoll testified that after leaving the house they must have driven for two and a half hours or more, when appellant told her they were in Indianapolis; that he stopped at a dark garage, locked her in the car and told her that he was going to see if the coast was clear and that if she made any attempt to scream or attract attention, he would "bump her off;" that she remained bound and gagged in the locked car; that appellant reported that the coast was not clear; that they drove to a deserted part of town, where appellant unbound her and ordered her to sit with him in the front seat; that he then untaped her mouth and she requested him to unbind her wrists, which were giving her a great deal of pain; that her head was still bleeding and that as soon as her mouth was untaped she asked him why he had kidnaped her and he replied, "For the money."

Appellant on the other hand testified that soon after they had passed Berry Stoll's car, which they had met while they were still in or near Louisville, Mrs. Stoll got out of the car and sat on the front seat with him, and that she was not bound or gagged but was free to talk and did talk. Appellant and Mrs. Stoll both testified that when they left the car she walked into the apartment (heretofore described as located at 2735 North Meridian Street.) Mrs. Stoll testified that they entered by the kitchen, which was dark; that she cooked some eggs, which they ate, and that she immediately became nauseated; that her head pained her and she was very weak and ill; that at her request appellant put mercurochrome on her head; that he refused to permit her to sleep on the divan in the living room; that the bedroom had twin beds and when they retired appellant bound her hands to the springs on either side so that she could not shift her position; that he slept in the other bed and tied a cord from her wrist to his so that if she moved he would know. She was not molested. She testified that the shades were down the whole time she was in the apartment, which was all of five days and parts of two others; that when he left the apartment to buy food, make telephone calls or for any other reason, he would put a chair in a closet, tie her to the chair, gag her, put adhesive over her lips and lock the door, that she was left in the closet several times a day and was never left in the room alone; that when she went to the bathroom she was permitted to close the door but not to lock it, and that he sat in the living room opposite the bathroom door with a pistol in his hand.

Appellant admitted that they were in the apartment for seven days and testified that during the first few days they ate, drank beer, listened to the radio, read newspapers and had discussions; that when he went out she was never bound or gagged until the last two days; that for the first three or four days she didn't appear anxious to get away, that she was calm and took it easy, "took it as a big joke," but that about the fifth or sixth day, possibly because of the publicity the case was getting and the news flashes on the radio, she realized the seriousness of the situation and threatened to walk out.

Mrs. Stoll testified that appellant got impatient at the delay in obtaining the ransom and said that her family was double-crossing him and that she wrote three letters at his direction over the week-end. Appellant denied that he ordered her to write these letters, which were in Mrs. Stoll's handwriting. One, written on Saturday, bore the salutation, "Dear Mr. Intermediary" and enclosed Mrs. Stoll's wedding ring and was apparently sent to verify change in plans, since it accompanied a type-written letter concluding "Kidnaper" and addressed to Robinson, Sr., the intermediary named in the ransom note, telling him to pay over the money to his daughter-in-law (appellant's wife) who would receive her instructions secretly.

A second letter, written on Sunday, was to Miss McHenry, who was addressed by a nickname known to both. It confirmed a phone call that appellant had made to her and stated that the daughter-in-law was to deliver the money. It warned that police must be called off or the kidnaper would carry out his threat.

The third letter, written to Berry Stoll on Sunday, stated that she was unharmed except for a small cut and called attention to the change in the person designated to deliver the money and that she must not be followed or interfered with and that it was the last chance for Mrs. Stoll to be delivered alive.

Appellant apparently kept in touch with the intermediary by telephone. Mrs. Stoll testified that he told her that he had made phone calls to the intermediary and to his wife. Miss McHenry received a phone call.

Meanwhile, the Stoll and Speed families got \$50,000.00 together in five, ten and twenty dollar bills. The serial numbers were recorded and the money sent by express under FBI guard to Nashville, where Thomas H. Robinson, Sr., the designated intermediary, lived. The package was delivered to Robinson, Sr. in the office of a Nashville attorney on Monday, October 15th, about 12:30 P.M.

The money was delivered to appellant next morning. Mrs. Stoll testified that on Tuesday, October 16th, while she was still tied in bed, she heard a knock at the door and called appellant's attention to it. He opened the door and his wife, Frances Robinson, entered, carrying a bundle with the ransom money in it, which she threw on the bed. Mrs. Stoll testified that Mrs. Robinson urged appellant to hurry and get away as the police were following her; that he urged her to go with him but she declined to go.

Mrs. Stoll testified that she was again tied and locked in the closet; that appellant went out and returned in about half an hour and again urged his wife to go with him; that he again left about 11:00 A.M. and soon thereafter Mrs. Robinson untied her and they ate; that at 2:00 P.M. they left the apartment together, walked a block and took a taxi to the home of a Rev. Clegg, whom Mrs. Stoll learned by radio was her husband's cousin; that while there she notified Miss McHenry by phone that she had been released; that the Cleggs started to drive her to Louisville but that the car was overtaken near Jeffersonville by Department of Justice Agents, who took her home.

There is no evidence except that of appellant, that Mrs. Stoll received half or any part of the ransom money. There is substantial testimony, including that of Mrs. Stoll, to the contrary. It appears that Mrs. Stoll's family had provided Mrs. Robinson some money for travelling expenses and that this amount, \$470.00, was returned by the Robinsons through Mrs. Stoll to her husband, Berry Stoll.

We do not undertake to trace appellant's movements after the release of Mrs. Stoll until his arrest, except in a most general way. He admitted that he crossed the continent two or three times; that he stayed at the Waldorf Astoria, the Ritz Carlton, the St. George and the New Yorker, hotels in New York; and the Ambassador and the Biltmore in Los Angeles. He spent and gave away money lavishly, some of it to his mother, who visited him in St. Louis, some to his father, some for the expenses of a travelling companion, some for automobiles, etc., etc. To use his own expression, "Oh, I don't know—that money I threw it away right and left." Something like \$5000.00 was taken from his person when he was arrested.

In addition to the testimony hereinabove disclosed, bearing on the issue of insanity, a mass of expert psychiatric testimony was introduced by both sides.

Dr. Bracken testified that he didn't think appellant had any control over his will. Dr. Solomon was of the opinion that he had no ability to distinguish right from wrong or to resist his impulses. Dr. Crice was of the opinion that appellant was suffering from an insane delusion which had destroyed his ability to distinguish right from wrong.

On the other hand, Dr. Singleton, who was psychiatrist at the penitentiary at Leavenworth, testified that appellant was capable of distinguishing between right and wrong and realized fully the consequences of any deliberate act. Dr. Richey, Chief Medical Officer at the Alcatraz penitentiary, testified to the same effect, on the basis of records of physical and mental examinations made of appellant there, at Atlanta and Leavenworth.

In response to a hypothetical question, Doctors Gardner, Kimbell, Landis and Ackerly, all eminent psychiatrists, stated that appellant was capable of distinguishing between right and wrong and realized the consequences of his own deliberate acts. Even appellant himself in the letter to Bates, written in 1936 and hereinafter referred to, said of himself, "For your information, I would like to state this, that I am not a mental case, I have no psychosis, and that former decree of insanity was the result of my father imposing on his friendships. . . ."

After a careful review of the entire record, we conclude that there was substantial evidence to support the verdict of the jury, and that the motion for peremptory instructions was properly denied.

Appellant urgently insists that the jury's recommendation of the death penalty was unjustified because there was no evidence that Mrs. Stoll was not liberated unharmed, or to state it more clearly, because there was no evidence that she was liberated harmed. The proposition has little or no weight.

We have already viewed the testimony of Mrs. Stoll and Mrs. Woollet upon this matter and have noted the testimony of several witnesses that there were two large blood stains on the coverlet of the bed in the room where Mrs. Stoll was seized. Mrs. Woollet testified that when Mrs. Stoll "made a grab for the gun" appellant struck her over the head with "a lead pipe. I suppose it was lead, it was a heavy pipe anyway. It was a pipe wrapped in paper." He then "hit her over the head again with that pipe and then she fell back on the bed. He hurt her pretty badly—I thought she was unconscious for a bit . . . it brought blood."

Berry Stoll testified that when his wife was returned, "She was in a horrible shape, her lips were drawn and

bleeding from where the adhesive tape had been, and raw. There was horrible blood all over her forehead. Her head was covered with blood and she was completely unnerved and completely shattered."

Mrs. Douglas Potter (Miss McHenry) who saw Mrs. Stoll either the first or second day after her return, testified: "She was in a highly nervous state, she had a bump on her forehead . . . and she had a cut in her hair, and she was very nervous, couldn't keep her mind on anything, was walking up and down, was very sensitive to any voice or any one coming up the driveway . . . Her mouth, the skin was all raw around the outside of her mouth, and also on her wrists, her skin was raw."

Dr. Frazier, who attended Mrs. Stoll about 9:00 P.M. on the day of her release, testified that she "was utterly worn out, she was pale, bedraggled, had circles under her eyes, she had sores on her lips with some remnant of the dirt adhesive plaster will leave at its margins . . . though outwardly calm, she was under terrific nervous tension . . . she had a rounded swelling on her right temple which was an inch and a half in diameter. It began under her hair line and covered pretty much the entire temple. This place was not discolored as the usual bruise is, but was quite tender to touch and quite hard, and I felt that it represented bleeding under the skin that covers the bone, the periosteum, and the mere fact that it did not discolor and was so long absorbing, going down, made me believe that perhaps there the actual integrity of the bone had been interrupted. The other injury was on the back of her head a little above and behind the ear, and that was covered up by a clot of blood which had matted the hair also . . . it was the sort of cut that should have had at least two stitches taken in it . . . but fortunately the wound had not gaped and healing was in process." He saw her on the following day and testified that her blood pressure had gone down but that she was completely exhausted. The lump on her head "had not been entirely absorbed at the end of the week, but it had diminished in size by more than half and was less tender. . . ."

The evidence that appellant seriously injured Mrs. Stoll at the time of her abduction and that she was suffering from these injuries at the time of her release was not only relevant, but was precise, substantial and highly cumulative.

It is argued that the jury would not have recommended the death penalty if appellant had not, in support of his contention that Mrs. Stoll went with him willingly, testified that he had had sexual relations with her. The dif-

difficulty with this contention is that it has no evidence to support it. It arises out of a statement by the court in imposing the sentence. The court said: "It seems to me that this jury would never have recommended the death penalty in this case except for the effect which they gave to the defense that the defendant made representing the relations between him and Mrs. Stoll. I believed if that contention had not been made, this jury would never have recommended the death penalty." But this comment of the court, standing alone, is not sufficient to set aside the verdict. Had the jurors themselves advanced the same reason for the imposition of the death penalty as did the Judge, they would not have been heard thus to impeach their verdict. *Hyde v. United States*, 225 U. S. 347, 384; *McDonald v. Pless*, 238 U. S. 264, 267.

Error is alleged upon the admission of evidence tending to show the commission of prior offenses by appellant. We do not discuss this matter in detail. This type of evidence, which to some extent was adduced by appellant himself, centered around the issue of insanity. It was relevant for whatever it was worth to the jury in assisting it to determine that issue and the court limited it to that purpose. There was no prejudicial error in its admission. See *Arwood v. United States*, 134 Fed. (2d) 1007, 1012 (C. C. A. 6).

Appellant contends that the court erroneously declined to permit him to impeach the witness Mrs. Woollet by showing that she had executed a contradictory affidavit and by showing further by witnesses Powell, Joseph Hayse and Nellie Hayse that she had made contradictory statements out of court concerning matters about which she testified.

First, as to Powell: It was not error to sustain the objection to his testimony because appellant wholly failed to observe the general rule, that to contradict the witness by evidence of what she had said out of court to other persons on the same subject contradictory to what she afterwards testified in court, it is essential that she should first be asked whether she made such statements at a fixed time and place, to certain persons, and that the words used or their substance be stated to her to refresh her memory and to enable her to reply intelligently.

Second, as to Joseph and Nellie Hayse: Appellant sought to prove by these witnesses that Mrs. Woollet had previously made statements and executed an affidavit that contradicted her testimony. The question arose as to whether the testimony of these witnesses would disclose confidential communications between attorney and

client. This is a question to be determined always by the judge. *Peoples Bank v. Brown*, 112 Fed. 652, 654 (C. C. A. 3). The Judge heard the matter out of hearing of the jury and declined to admit the offered evidence. Without going into great detail, we find a preponderance of that evidence to be that the witness, Mrs. Woollet and her husband, Fowler Woollet, after the alleged kidnaping, conceived the idea that they might have a cause of action against the Stolls and Mrs. Speed, the mother of Mrs. Stoll, for some character of mistreatment, real or imaginary, in connection with the event; that Fowler Woollet consulted Joseph Hayse, the witness, who was a lawyer, and later brought his wife to Hayse's office; that they consulted Hayse with reference to their claim and that in that connection Mrs. Woollet made a detailed statement of facts connected with the alleged kidnaping; that later this statement was in substance repeated to him at his home and reduced to writing by a notary public (who assisted Hayse and subsequently married him), and was signed and sworn to by Mrs. Woollet. The Woollets claimed that these statements and the affidavit were confidential and we do not think error was committed in their exclusion. No citation of authority is needed to support the familiar and long established rule of law that an attorney cannot disclose communications made to him by his client without the client's consent, and Mrs. Woollet has not consented. It is beside the point that Joseph Hayse did not receive a fee or accept a retainer. Moreover, we have examined the affidavit in question and find little therein that would tend to contradict the testimony of Mrs. Woollet upon any material matter.

Appellant asserts that the court erroneously overruled his motion to strike the testimony of Government witnesses Smith and Knowles and the exhibits to which their testimony referred. Smith took fingerprints of appellant following his arrest. These fingerprints were introduced in evidence. Knowles, having more than seventeen years' experience in connection with fingerprinting, compared the fingerprints of appellant with those on the ransom note and its envelope and a large number of exhibits which purported to reveal appellant's fingerprints, and testified that the fingerprints upon the exhibits could have been made by no other person "than Thomas H. Robinson or by any other finger than his right thumb." Appellant's claim is that the name "Thomas H. Robinson" used by Knowles referred to his father, Thomas H. Robinson, Sr., and not to him, Thomas H. Robinson, Jr. The point has no weight. Appellant's father, Thomas H. Robinson,

Sr., was not on trial. He had long since been acquitted, and was dead. An examination of the entire testimony of Knowles clearly indicates that he used the names "Thomas H. Robinson" and "Thomas H. Robinson, Jr." interchangeably as referring to appellant. We have no doubt that both the court and jury so understood.

Charles A. Appel, a handwriting and questioned documents' expert, was a witness for the Government. The Government proposed, by the introduction of his testimony, to establish the genuineness of appellant's handwriting upon the ransom note and other documents by comparison with known specimens of his handwriting. The objection to Appel's testimony was that appellant had not been given notice before trial of the Government's intention to examine this expert. Appellant relies upon Sec. 422.120, Kentucky Revised Statutes (Ky. Stat. Sec. 1649) which requires such notice, but appellant's obstacle is that federal courts are not bound in criminal cases by state practice or statutes. *United States v. Murdock*, 284 U. S. 141, 150; *Cagle v. United States*, 3 Fed. (2d) 746 (C. C. A. 6). Appellant's citation of *Erie Railroad v. Tompkins*, 304 U. S. 64, is not in point. It has not been decided that the holding in *Erie R. R. Co. v. Tompkins* is applicable in a criminal case. Moreover, that case affects rules of decision and not of practice.

Error is assigned upon the admission of two letters written by appellant, one to W. A. Smith of the FBI, dated July 1, 1936, and the other to Sanford Bates, Director of the Federal Bureau of Prisons, dated January 1, 1936. These letters were written while appellant was an inmate of the Federal Penitentiary at Leavenworth, undergoing the sentence imposed upon him on his original plea of guilty. A portion of the Smith letter was introduced for the purpose of having appellant's handwriting in the record and was competent therefor in view of the Government's contention that appellant wrote the ransom note and other documents. Finally, the whole letter was read to the jury, without objection, and appellant admitted that he voluntarily wrote it. The Bates letter was admitted as relevant to the issue of insanity under the plea of not guilty. We do not set out the contents of this letter but content ourselves with saying that it was competent for what it was worth to the jury in determining the question of appellant's sanity or insanity at the time of the occurrence of his alleged offense. The point attempted to be made is that these letters were in the nature of involuntary confessions of guilt and therefore inadmissible for any purpose. This

contention is unsound. The letters were written without the slightest duress or constraint, were wholly voluntary, and we find no reversible error in their admission.

Appellant complains of certain excerpts taken from the opening argument to the jury of the Assistant District Attorney and from the closing argument of the District Attorney. These excerpts are found at pages 130-133 of the record. We regard it as unnecessary to reproduce them. They were unexcepted to.

The general rule is that counsel for the defense cannot remain silent and after verdict seize for the first time on the point that the comments to the jury were improper and prejudicial. See *Crumpton v. United States*, 138 U. S. 361, 364, a case involving the death penalty; and *United States v. Socony-Vacuum Oil Co.*, 310 U. S. 150, 239. That portion of the argument of the Assistant District Attorney was, in substance, nothing more than an explanation to the jury of the effect of their verdict in case it did, or did not, make a recommendation. This was not prejudicial.

In the closing moments of his argument the District Attorney stated, "I think the hardest thing I have ever done in my life, and a day that I will always remember, was when I explained to Mrs. Stoll" that she could probably expect that appellant would give testimony that would reflect upon her character for virtue. He went on to state to the jury the difficulty he had had within the time limited to procure and produce evidence to refute this particular testimony of appellant. These statements, strictly speaking, overstepped the bounds. We have examined them in connection with the entire argument and we regard them as isolated expressions, which could have no prejudicial effect. In *Dunlop v. United States*, 165 U. S. 486, 498, it was said: "If every remark made by counsel outside of the testimony were ground for reversal, comparatively few verdicts would stand, since in the ardor of advocacy and in the excitement of trial, even the most experienced counsel are occasionally carried away by this temptation." See *Stephan v. United States*, 133 Fed. (2d) 37, 98 (C. C. A. 6).

It is urged that the court erred in certain instructions to the jury and in refusing to give certain requested instructions. The requests were presented before the charge was delivered. At its close the court asked, "Any further requests by counsel for either side?" to which counsel for each side replied, "Nothing further, Your Honor."

No exceptions were taken to the charge and under well recognized procedure it is not reviewable. *Chapman & Dewey Lbr. Co. v. Hanks*, 106 Fed. (2d) 482, 485 (C. C. A. 6); *Ill. Cent. R. R. Co. v. Sigler*, 122 Fed. (2d) 279, 284 (C. C. A. 6). But the case involves the death penalty and we have therefore examined the charge and the requests. *Stephan v. United States*, supra. The substance of these requests was that the court instruct the jury that it could not recommend the death penalty if Mrs. Stoll were released unharmed before imposition of sentence, and further, that it could not recommend the death penalty because there was no evidence upon the question whether at the time of the trial she was either injured or uninjured. These requests were not only inapplicable but were not the law. The Act refers to the condition of the kidnaped person at the time of his or her release [*United States v. Parker*, 103 Fed. (2d) 857, 861 (C. C. A. 3)] and not at the time of trial or the imposition of sentence. The court carefully, and we think, correctly, followed the law as interpreted in the *Parker* case.

A general criticism of the charge is that it made unfair comment upon the testimony of some of appellant's witnesses and that in delivering it the court's manner of speech, tone of voice and articulation were prejudicial. We have examined these criticisms and conclude that the charge was fair and impartial.

It is said that the court erred in overruling appellant's motion for a new trial. The court's action upon the motion for a new trial is not reviewable further than to determine whether it went beyond the limits of judicial discretion. The record indicates no such abuse of judicial authority.

After having carefully examined this unusually large record, we conclude that it presents no prejudicial error, and the judgment appealed from is therefore affirmed.

[fol. 1572-1573] PETITION FOR REHEARING—Filed August
17, 1944

No. 9754.

United States Circuit Court of Appeals
FOR THE SIXTH CIRCUIT.

THOMAS HENRY ROBINSON, JR., - Appellant,

versus

UNITED STATES OF AMERICA, - Appellee.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF KENTUCKY.

PETITION FOR REHEARING BY APPELLANT.

ROBERT E. HOGAN,

809 Kentucky Home Life Building,
Louisville, Kentucky,

Counsel for Appellant.

August 15, 1944.

3

1

SUBJECT INDEX.

	PAGE
Subject Index	i
Alphabetical List of Cases	ii
Statement	1
I. The Indictment Charges an Offense Not Within the Act. Criminal Statutes are Always Strictly Construed	1-12
II. The Proviso is Not a Part of the Punishment . . .	13-18
III. Jurors are Allowed to Impeach Their Verdicts to Prevent Grave Injustice Being Done	18-20
IV. If the District Attorney's Remarks Overstepped the Bounds, that is Ground for Reversal	21

ALPHABETICAL LIST OF CASES.

	PAGE
American Jurisprudence, "Statutes," Section 439...	17
American Jurisprudence, "Constitutional Law," Section 166	17
Butts v. Merchants and Miners Transportation Co., 33 S. Ct. 964, 230 U. S. 126.....	16
Connally v. General Construction Co., 269 U. S. 385, 46 S. Ct. 126.....	13
Connolly v. Union Sewer Pipe Co., 22 S. Ct. 431, 184 U. S. 540	16
Fasulo v. United States, 272 U. S. 620, 47 S. Ct. 200...	4
Karem v. United States, 121 Fed. 250 (C. C. A. 6th) ..	9
McFarland v. American Sugar Refining Co., 36 S. Ct. 498	16
Mattox v. United States, 13 S. Ct. 50.....	20
State v. Levitan, 210 N. W. 111.....	16
State v. Mattison, 100 N. W. 1091.....	10
United States v. Chase, 135 U. S. 255, 10 S. Ct. 756...	8
United States v. Hopkins, 290 F. 619.....	10
United States v. Resnick, 299 U. S. 207, 57 S. Ct. 126.	6
United States v. Wiltberger, 5 Wheat. 76, 5 L. Ed. 37.	8
Weems v. United States, 30 S. Ct. 544.....	16
Williams v. State of North Carolina, 317 U. S. 287, 63 S. Ct. 207	11

United States Circuit Court of Appeals

FOR THE SIXTH CIRCUIT.

No. 9754.

THOMAS HENRY ROBINSON, JR., - - - - *Appellant,*

v.

UNITED STATES OF AMERICA, - - - - *Appellee.*

PETITION FOR REHEARING BY APPELLANT.

STATEMENT.

May it please the Court:

The appellant believes that the opinion rendered by this Court under date of July 31, 1944, is so inconsistent with the law, and with the facts of this case, that a petition for rehearing properly lies and should be sustained.

I.

**THE INDICTMENT CHARGES AN OFFENSE NOT
WITHIN THE ACT. CRIMINAL STATUTES ARE
ALWAYS STRICTLY CONSTRUED.**

It is well settled in the law that, there being no constructive offenses, the violation of a statute must be plain to warrant punishment. It is also a general rule that criminal statutes are always strictly construed. Nothing is ever taken by intendment.

The opinion by this Court of July 31, 1944, states that the provisions "provided that the sentence of death shall not be imposed by the Court if, prior to its imposition, the kidnaped person has been liberated unharmed" DO NOT CONSTITUTE AN ELEMENT OR INGREDIENT OF THE OFFENSES DENOUNCED IN SECTION 408a. If that be true, and assuming for the sake of argument in this case it is true, it necessarily follows that the concluding portion of the indictment's Second Count, in these words:

"and the said Thomas Henry Robinson, Jr., Mrs. Frances Robinson and Thomas Henry Robinson, Sr., did then and there, while the said Mrs. Alice Stoll was in their custody, beat, injure, bruise and harm and aided and abetted each other in beating, injuring, bruising and harming the said Mrs. Alice Stoll, and did not liberate her unharmed,"

do not constitute an element or ingredient of the offenses denounced in Section 408a, Title 18, United States Code Annotated. Those words found and contained in the concluding part of the indictment in question are such as are usually found in the offense of "Assault and Battery." According to "Words and Phrases—Second Series," an assault is defined to be "An attempt with force and violence to do injury to the person of another." A battery is "The actual infliction of an injury."

Carrying one step further the logic of the opinion that the proviso is not an element or ingredient of the offense, the words of the indictment above quoted, which are descriptive of an assault and battery, DO NOT constitute an element or ingredient of the offenses denounced in Section 408a. They are not in any manner related to the offense. They are related, if at all, to the term "unharmed," an ambiguous and uncertain term, having no well defined or

understood meaning. But, this Court, in its opinion, has said that the proviso, of which unharmed is a part, is not an element or ingredient of the offense. It follows, therefore, that if the proviso or term to which those "assault and battery" words may be said to belong is not an ingredient of the offense, those "assault and battery" words themselves are not an element or ingredient of the offense.

For ready reference, and to show just what the gravamen of the offense is, the pertinent part of Section 408a is here reproduced:

"Whoever shall knowingly transport or cause to be transported, or aid or abet in transporting, in interstate or foreign commerce, any person who shall have been unlawfully seized, confined, inveigled, decoyed, kidnaped, abducted, or carried away by any means whatsoever and held for ransom or reward or otherwise, except, in the case of a minor, by a parent thereof, shall, upon conviction be punished * * *"

Boiled down, the gravamen of the offense denounced by the section in question is the TRANSPORTATION in interstate commerce of one who shall have been unlawfully kidnaped and held for ransom or reward. There is no language or words in the offense portion of that section which even intimate or suggest that an assault and battery or beating, bruising, injuring or harming in any way, directly or indirectly, constitute an element of the offense denounced by the Act. It makes no difference, therefore, how many such acts might have been charged in the indictment. If such acts as charged are not within the purview of the statute, they constitute no offense whatsoever. There are no constructive offenses, and there must be a plain violation of a statute before punishment is warranted.

If, as in this case, the indictment charges acts which are constructive offenses, the demurrer thereto should have been sustained, no evidence received upon those issues, and, having failed to sustain the demurrer to the indictment, the Court should have sustained the motion in arrest of judgment. (See motion in arrest of judgment, pp. 60 and 61, T. R.).

In the case of *Fasulo v. United States*, 272 U. S. 620, 47 S. Ct. 200, Fasulo was indicted, with others, and was convicted of a conspiracy to violate a section of the statute denouncing the fraudulent obtention of money by use of the mails. The question for decision was whether the use of the mails for the obtaining money by means of threats of murder or bodily harm was a scheme to defraud within the meaning of the statute. The Government argued that the statute embraced all dishonest methods of deprivation the gist of which is the use of the mails. That opinion, incidentally, referred to the Horman Case, 116 F. 350, in which this Court of the Sixth Circuit, had, in affirming the case, decided that any scheme in its necessary consequence calculated to injure another or to deprive him of his property wrongfully, amounted to a defrauding within the meaning of the statute. But the Supreme Court, in the Fasulo Case, held that the rule laid down in the Horman Case went beyond the meaning of the language of the statute. This is said in the Fasulo opinion:

“Undoubtedly the obtaining of money by threats to injure or kill is more reprehensible than cheat, trick or false pretenses; but that is not enough to require the court to hold that a scheme based on such threats is one to defraud within section 215. * * * it is not permissible for the court to search for an intention that the words themselves do not suggest. *United States v. Wiltberger*, 5 Wheat. 76, 95, 5 L. Ed. 37.

"If threats to kill or injure unless money is forthcoming do not constitute a scheme to defraud within the statute, there is none in this case. . . . A comprehensive definition of 'scheme or artifice to defraud' need not be undertaken. The phrase is a broad one and extends to a great variety of transactions. But broad as are the words 'to defraud,' they do not include threat and coercion through fear or force. The rule laid down in the Horman Case includes every scheme that in its necessary consequences is calculated to injure another or to deprive him of his property. That statement goes beyond the meaning that justly may be attributed to the language used. . . ."

"There are no constructive offenses; and, before one can be punished, it must be shown that his case is plainly within the statute."

To paraphrase some of the above expressions, undoubtedly beating, injuring and harming is more reprehensible than merely transporting the kidnaped victim in interstate commerce, but that is not enough to require the Court to hold that such acts are an ingredient of the act of transporting the victim in such commerce. Again, if beating, injuring, harming and bruising do not constitute transportation of kidnaped persons in interstate commerce, the indictment containing such charges is plainly demurrable. Still further paraphrasing, the phrase "transportation of kidnaped victims in interstate commerce" is a broad one and extends to a great variety of transactions. But broad as are the words, they do not include beating, bruising, injuring and harming. Before appellant can be punished, it must be shown that his case is plainly within the statute.

The appellant, Robinson, Jr., in demurring to the indictment, charged that the matters alleged therein did not constitute any offense against the laws of the United States, and that it did not contain facts sufficient to charge him

with the commission of any offense against the laws of the United States (T. R. 33).

In the case of *United States v. Resnick*, 299 U. S. 207, 57 S. Ct. 126, the accused demurred to the indictment upon the ground that "the facts alleged are not sufficient to constitute a violation of the act." The Court, in that case, sustained the demurrers and discharged the defendants. The United States appealed. In that case, the defendants were charged, in four counts, with having sold for fruits and vegetables two-quart metal hampers which did not comply with the Act, in that they were not of any standard size authorized by the Act and did not come within any tolerance established by the Secretary of Agriculture. Section 1 of the Act in question in that case declared that standard hampers should be of the nine sizes specified, but two-quart hampers were not specified as being among the nine sizes. Section 5 of the Act made it unlawful to manufacture for sale, or to sell hampers for fruits or vegetables that did not comply with the Act, and providing that any one violating that section should be deemed guilty and upon conviction punished by a fine. Said the opinion:

"The question is whether the provisions of the act are effective to make the manufacture or sale of two-quart hampers punishable as a crime. The nine sizes standardized in section 1 are the only ones within section 4. The Secretary was not authorized by section 3 to prescribe tolerances in respect of two-quart hampers, and has not attempted to do so. The indictments must be construed to charge merely manufacture and sale of hampers each of capacity of two quarts, one-sixteenth of a bushel, 134.4 cubic inches. They do not charge that any such hamper purported to be of any size defined by section 1, or was in any respect liable to deceive. It follows that, unless the clause of section 5 which forbids manufacture or sale of contain-

ers 'that do not comply with this Act' makes criminal the manufacture or sale of two-quart hampers, the facts alleged do not constitute any offense.

"Statutes creating crimes are to be strictly construed in favor of the accused; they may not be held to extend to cases not covered by the words used. *United States v. Wiltberger*, 5 Wheat. 76, 95, 5 L. Ed. 37; *Fasulo v. United States*, 272 U. S. 620, 628, 47 S. Ct. 200, 201, 71 L. Ed. 443. The clause just quoted is crucial; its words are plain and, having regard to the connection in which they are used, must be given the meaning naturally attributable to them. It is obvious that they do not extend to hampers other than the nine classes defined in section. The act applies to none of capacity less than four quarts. *Pacific States Box & Basket Company v. White*, 296 U. S. 176, 183, 56 S. Ct. 159, 162, 80 L. Ed. 138, 101 A. L. R. 853. IT EXPRESSES NO CONDEMNATION OF TWO-QUART HAMPERS. Before one may be punished, it must appear that his case is plainly within the statute; there are no constructive offenses. *United States v. Lacher*, 134 U. S. 624, 628, 10 S. Ct. 625, 33 L. Ed. 1080; *United States v. Chase*, 135 U. S. 255, 261, 10 S. Ct. 756, 34 L. Ed. 117; *Fasulo v. United States*, *supra*, 272 U. S. 620, at page 629, 47 S. Ct. 200, 202, 71 L. Ed. 443. As in absence of governmental regulation the making and selling of containers is untrammelled, failure expressly to permit is not to prohibit. Mere standardization of a bushel container at 2150.42 cubic inches would not make criminal the manufacture or sale of a half-bushel container having capacity of 1075.21 cubic inches. The prescribing of capacities of containers described in section 1 does not prohibit manufacture or sale of the two-quart hampers described in these indictments.

"The judgments sustaining the demurrers and discharging the accused must be affirmed."

In view of that opinion, and the opinion in the *Fasulo* Case, referred to twice in the above quotation, it is plain to be seen that, as Section 408a does not prohibit beating,

bruising, harming or injuring a transported-in-interstate-commerce kidnaped victim, the conviction under an indictment which contains such accusations should not stand.

Still another case, referred to in the Fasulo and Resnick Cases, is that of *United States v. Chase*, 135 U. S. 255, 10 S. Ct. 756, 34 L. Ed. 117. In that case the indictment was under Section 1 of the Act of July 12, 1876, declaring "every * * * book, pamphlet, picture, paper, writing, print or other publication of an indecent character" to be unmailable, and making their deposit in the mails an offense. The question was whether to send an obscene LETTER by mail violated that section. The Court held that the letter was NOT a writing within the meaning of the statute. It said (page 261; 10 S. Ct. 758):

"We recognize the value of the rule of construing statutes with reference to the evil they were designed to suppress as an important aid in ascertaining the meaning of language in them which is ambiguous and equally susceptible of conflicting constructions. But this court has repeatedly held that this rule does not apply to instances which are not embraced in the language employed in the statute, or implied from a fair interpretation of its context, EVEN THOUGH THEY MAY INVOLVE THE SAME MISCHIEF WHICH THE STATUTE WAS DESIGNED TO SUPPRESS."

In the case of *United States v. Wiltberger*, 5 Wheat. 76, 95, 5 L. Ed. 37, referred to in the Fasulo and Resnick Cases, the opinion was by Chief Justice Marshall of the Supreme Court of the United States. Wiltberger was indicted for manslaughter committed on board an American ship in the River Tigris, in the Empire of China, thirty-five miles above the mouth of the river. Section VIII of the Act in question made it a crime to commit, upon the

high seas, or in any river, haven, basin or bay, murder, robbery or any other offense, which, if committed within the country, would, by the laws of the United States, be punishable with death. Section XII of the Act made it a crime for any seaman or other person to commit manslaughter upon the high seas. ~~The~~ pivotal point in the case was whether the manslaughter was committed upon the high seas, or in a river. It was contended by the United States that Section VIII and Section XII should be construed together so as to bring the crime within the purview of Section VIII. The opinion is a long one, and only pertinent excerpts will be quoted. They follow:

"To determine that a case is within the intention of a statute, its language must authorize us to say so. It would be dangerous, indeed, to carry the principle that a case which is within the reason or mischief of a statute, is within its provisions, so far as to punish a crime not enumerated in the statute, because it is of equal atrocity, or of kindred character, with those which are enumerated. If this principle has ever been recognized in expounding criminal law, it has been in cases of considerable irritation, which it would be unsafe to consider as precedents forming a general rule for other cases. . . .

"We can conceive no reason why other crimes which are not comprehended in this act should not be punished. But Congress has not made them punishable, and this court cannot enlarge the statute."

In *Karem v. United States*, 121 Federal, 250 (C. C. A. 6th), appellant was convicted under an indictment framed under Section 5508 of Revised Statutes, and charged him with conspiracy, with others, to intimidate certain persons of color from exercising the right and privilege of voting. Karem demurred to the indictment upon the ground that the facts stated did not constitute an offense against the

laws of the United States, but it was overruled, and the jury found him guilty. The opinion, which is exhaustive, determined that the right to vote is dependent upon the laws of each state, and that the powers of the states were limited in one particular only—the right of the voter not to be discriminated against at elections on account of race or color. The opinion pointed out that the right not to be discriminated against on account of race or color was very different from the affirmative right to vote. The case turned upon the fact that Karem was charged with preventing persons of color from voting—not a crime under federal law, and the opinion concluded by holding that the offense charged in the indictment was not included within or covered by Section 5508, and ordered the judgment reversed, with directions to sustain the demurrer to the indictment.

Appellant, Robinson's, demurrer to the indictment attacked it upon the further ground of duplicity (T. R. 33). The second count charged an aiding and abetting of the transportation in commerce of the kidnaped person, and also an aiding and abetting of the beating, injuring, bruising and harming of Mrs. Stoll. That made it bad for duplicity. In the case *United States v. Hopkins*, 290 F. 619, this was said:

“The first counts in Nos. 1894 and 1895 attempts to charge all four of these offenses and adds to them ANOTHER OFFENSE OF AIDING, ASSISTING, AND ABETTING in each of the 4. The demurrer challenges the indictment on the ground that it is multifarious. I think the objection is well taken. As I understand the law, different charges of crime must be stated in different counts. I do not understand that different offenses, although similar in their nature, may be charged in the same count.”

In *State v. Mattison*, 100 N. W. 1091, the opinion recites:

"The information expressly purports to charge the crime denounced—shooting with intent to kill; but was evidently framed so as to include the crime of maiming, on the theory, apparently, that inasmuch as the crime of maiming resulted from the commission of the shooting, therefore the former could be included in the charge of the latter as an included constituent offense. There is no warrant for such a theory. Only one offense can be charged in the information. * * *

The state cannot, by alleging matters wholly immaterial to the description of the crime charged, compel the defendant to come to trial prepared to contest any issue which the state is not bound to prove in order to convict him of the offense charge. * * *

Maiming is not a necessary element of the crime of shooting with intent to kill. In stating the facts constituting the last mentioned crime it is in no case necessary to show maiming. Maiming may, and often does, result from shooting, but it is a distinct offense, under no circumstances forming part of the consummated crime of shooting with intent to kill. In this case, the maiming and shooting bear precisely the same relation to each other as the larceny and burglary involved in *State v. Smith*, and for the reasons stated in that case, cannot be joined in the same indictment or information."

In the instant case, beating, harming, bruising and injuring are not denounced by Section 408a, and are distinct offenses, and under no circumstances forming part of the consummated crime of transporting in interstate commerce of a kidnaped person. There is no question but what the indictment is bad and that the demurrer to it should have been sustained and that the motion in arrest of judgment should have been sustained.

In the instant case it would be inconsistent to assert that the forepart of the indictment charges an offense de-


nounced by statute even if the concluding part of the indictment charging matters of beating, etc., are not covered by the statute. The answer to such an argument would be that it is impossible to separate the valid from the invalid, and that in this case it is impossible of accomplishment because the jury heard evidence upon the invalid accusations, and it is impossible to say that their verdict and recommendation did not rest upon, or were not considerably swayed by, evidence which they were permitted to receive upon the beating, bruising and injuring portion of the indictment.

The jury heard and considered the evidence concerning the alleged striking and injuring of Mrs. Stoll by the appellant and concerning her condition upon return from Indianapolis. What effect that had upon their verdict and recommendation of the death penalty it is impossible to say. Neither can it be said that the jury disregarded such testimony in arriving at their verdict and making their recommendation. That such allegations had no place in the indictment and that evidence introduced in support thereof was prejudicially received, can not be successfully disputed or brushed aside. The result is that it cannot be determined that appellant was not convicted upon some other theory than beating, bruising and injuring. Consequently what is said in the case of *Williams v. State of North Carolina*, 317 U. S. 287, 63 S. Ct. 207, 210, is peculiarly applicable:

“• • • we cannot determine on this record that petitioners were not convicted on the other theory on which the case was tried and submitted, viz., the invalidity of the Nevada decrees because of Nevada's lack of jurisdiction over the defendants in the divorce suits. That is to say, the verdict of the jury for all we know may have been rendered on that ground

alone, since it did not specify the basis on which it rested. It therefore follows here, as in *Stromberg v. California*, 283 U. S. 359, 368, 51 S. Ct. 532, 75 L. Ed. 1117, 73 A. L. R. 1484, *that if one of the grounds for conviction is invalid under the Federal Constitution, the judgment cannot be sustained.* No reason has been suggested why the rule of the *Stromberg* case is inapplicable here. Nor has any reason been advanced why the rule of the *Stromberg* case is not both appropriate and necessary for the protection of rights of the accused. To say that a general verdict of guilty should be upheld though we cannot know that it did not rest on the invalid constitutional ground on which the case was submitted to the jury, would be to countenance a procedure which would cause a serious impairment of constitutional rights."

Let it be repeated that Section 408a expresses no condemnation of beating, bruising, injuring or harming, as charged in the indictment in question. Before appellant may be punished, it must plainly appear that his case is plainly within the statute. The trial Court should have sustained the demurrer to the indictment and the motion in arrest of judgment. Having failed to do that, it is incumbent upon this Court to correct the error of the trial court, and to reverse the case. It has been conclusively demonstrated in the opinions of the Supreme Court that use of the mails to defraud does not embrace obtaining of money by threats to injure or kill; that prescribing of capacities of vegetable containers does not include two-quart hampers not specified in the Act; that the Act covering unmailable books, pamphlets, pictures, papers, writings and other publications of an indecent character does not embrace an obscene letter, and that an act condemning the commission of manslaughter upon the high seas does not embrace manslaughter committed in a river. That list



could be extended, but that should not be necessary. If such a fine line has been heretofore drawn between the statutes denouncing specified acts as crimes and acts which, though related in character of mischief, are yet not within the statutory provisions, it has been because of the rule that criminal statutes are always strictly construed; that there are no constructive offenses; and, before one can be punished it must be shown that his case is plainly within the statute. It is not asking too much of this Court to follow and be guided by those rules of precedent, when this Court is urgently requested to consider this case in the light of those persuasive standards of precedent, and to reverse it.

II.

THE PROVISIO IS NOT A PART OF THE PUNISHMENT.

The opinion states (p. 3) that the short answer to the criticism that the provision: "provided that the sentence of death shall not be imposed by the court if, prior to its imposition, the kidnaped person has been liberated unharmed" is too vague to form the basis of a valid indictment is that the provisions do not constitute an element or ingredient of the offenses denounced in Section 408a; that they relate to the punishment, and that the Constitution does not grant the accused the right to be informed of the punishment that may be inflicted upon him by law.

That expression in the opinion is in direct conflict with that part of the opinion of the Supreme Court of the United States in *Connally v. General Construction Company*, 269 U. S. 385, 46 S. Ct. 126, to the effect that:

"Penal statutes prohibiting the doing of certain things, AND PROVIDING A PUNISHMENT FOR

THEIR VIOLATION, should not admit of such a double meaning that the citizen may act upon the one conception of its requirements and the courts upon another."

Also:

"For the vice of the statute here lies in the impossibility of ascertaining, by any reasonable test, that the Legislature meant one thing rather than another."

It is not reasonable to suppose that the Supreme Court would have added the phrase "and providing a punishment for their violation" unless it meant, and what the words indicate, that the punishment provision of a penal statute should not admit of a double meaning. It is significant that this Court, in its opinion, cited but one authority, a text-book, "Bishop on Criminal Law," upon the most important constitutional question in the case; that is, that the Lindbergh Act is unconstitutional because of ambiguity. It is submitted that the Supreme Court authorities cited by appellant in his original brief should be more persuasive than text-book authority on such an all-important question of the case.

It is likewise submitted that the provision in these words:

"provided that the sentence of death shall not be imposed by the court if, prior to its imposition, the kidnapped person has been liberated unharmed,"

does not merely relate to the punishment. To begin with, it is a proviso and is not a part of the punishment. It is in the nature of a limitation upon the imposition of the death penalty. It might be termed an exception. From what is known of the history of this legislation, it is somewhat certain that the Legislature would not have passed the amended Act with the provision deleted. The original

Act passed in 1932 did not provide for the infliction of the death penalty upon conviction, and consequently there was no limitation in the original statute, by way of a proviso, inhibiting the punishment by death under designated circumstances. History of the legislation reveals that Congress added this proviso to the amended Act, when it was enacted into law in 1934, as an inducement to the kidnaper not to kill the victim. It would not have passed the amended Act without incorporating into the amended Act the inducement proviso. The proviso, therefore, may be said to be a component part of the Act and not merely of the punishment feature of the statute. It remains to be determined what effect upon the whole Act the proviso would have, if the language of the proviso is constitutionally invalid. A statute so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the due process of law clause. That this proviso is so vague as to violate the ~~due~~ process of law clause is unquestionable. The opinion in this case recites that the questioned proviso furnishes a basis for proof as to what extent the offense was aggravated, and that if ambiguity be assumed, it is completely negatived by the averments that Mrs. Stoll was beaten, bruised and injured, but such a statement is out of harmony with the principle announced in the Lanzetta case, 59 S. Ct. 618, to this effect:

“If on its *face* the challenged provision is repugnant to the due process clause, specification of details of the offense intended to be charged would not serve to invalidate. * * * It is the statute, not the accusation under it, that prescribes the rule to govern conduct and warn against transgression. * * * No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes.”

If a statute, or any provision thereof, in invalid, specification of details in an indictment would not validate it; nor would it be permissible to allow evidence to be introduced to prove the specifications in the indictment. If a statute is invalid, it can not be made valid or improved upon by the drawing of an indictment and elaborating upon the ambiguous words of the statute or by the introduction of any amount of evidence. Upon the premise and assumption that this provision in question is invalid, and it is, what then is the effect upon the remaining portion of the statute? In *Connolly v. Union Sewer Pipe Company*, 22 S. Ct. 431, 184 U. S. 540, it is said that when the exemption clause or provision is declared unconstitutional, and that it is clear the Legislature would not have passed the law without including it, then the whole statute must be invalidated. This case is quoted from in the case of *State v. Levitan*, 210 N. W. 111, at page 119, as follows:

“But if an obnoxious section is of such import that the other sections without it would cause results not contemplated or desired by the Legislature, then the entire statute must be held inoperative.”

Of like effect see *Butts v. Merchants and Miners Transportation Company*, 33 S. Ct. 964, at p. 967; 230 U. S. 126:

“Here it is not possible to separate that which is constitutional from that which is not. * * * Those words, as the context and the preamble show, were purposely used. They express the legislative will, and cannot be limited in the manner suggested without altering the purpose with which the two sections were enacted. They must therefore be adjudged altogether invalid.”

See, also, *McFarland v. American Sugar Refining Company*, 36 S. Ct. 498, p. 501:

"We agree with the court below that the act must fall as a whole, as it falls in the sections without which there is no reason to suppose that it would have been passed."

A case dealing with PUNISHMENTS, claimed to be separable, but which were declared otherwise, is that of *Weems v. United States*, 30 S. Ct. 544, 555, the pertinent part of which reads:

"It is suggested that the provision for imprisonment in the Phillipine Code is separable from the accessory punishment, and that the latter may be declared illegal, leaving the former to have application. * * *

"The Phillipine Code unites the penalties of cadena temporal, principal and accessory, and it is not in our power to separate them, even if they are separable, unless their independence is such that we can say that their union was not made imperative by the legislature. * * * This certainly cannot be said of the Phillipine Code, as a Spanish enactment, and the order putting it into effect in the islands did not attempt to destroy the unity of its provisions or the effect of that unity. In other words, it was put into force as it existed, with all its provisions dependent. We cannot, therefore, declare them separable."

See American Jurisprudence, subject "Statutes," Section 439:

"All parts of a statute, including provisos, are to be construed together."

American Jurisprudence, "Constitutional Law," Section 166:

"Although the courts may eliminate parts of an act as unconstitutional and sustain and give effect to the remaining portions, it is sometimes difficult to

apply this process to penal statutes, because they are always strictly construed. Hence the courts incline toward treating a penal statute as void in its entirety whenever one section or clause is clearly unconstitutional."

Enough authority has been cited and quoted from to unerringly convince that the proviso is not only invalid from a constitutional standpoint, but that the whole statute, of which it is a part, is likewise invalid. Any other construction would do violence to the great weight of authority to the contrary.

If this Court, nevertheless, shall refuse to accede to the majority rule and shall continue to insist that the proviso is part of the punishment feature of the statute, then it behooves the Court to follow that line of authority to the effect that facts constituting aggravation of a crime as will increase the statutory punishment must be plainly charged or they are not confessed by a plea or established by a verdict of guilty. The indictment in the instant case miserably failed in that important particular. The appellant, under familiar rule, was entitled to be apprised of the facts constituting aggravation and what facts, not conclusions, amounted to the alleged harmed condition of the alleged victim. In this connection the Court is respectfully urged to consider the Meyers, the Aderhold and Goodman cases, and the quotation from Bishop's Criminal Law, found on pages 91, 92, 93, 94 and 95 of appellant's original brief, all of which are in accord that, under such circumstances, the accused is entitled to have the facts constituting the aggravation of a crime plainly charged.

III.

JURORS ARE ALLOWED TO IMPEACH THEIR VERDICTS TO PREVENT GRAVE INJUSTICE BEING DONE.

The opinion, on pages 18 and 19, says that there was no evidence to support the Court's remarks to the effect that the jury would never have recommended the death penalty except for the effect which they gave to appellant's representations about his relations with Mrs. Stoll, and that such comment of the Court, standing alone, is not sufficient to set aside the verdict, and that had the jurors themselves advanced the same reason as did the Judge, they would not have been heard to impeach their verdict. Two cases are cited, one of which will be referred to later.

It is submitted that, had the jurors made affidavits advancing therein the reasons related by the Judge in the particulars mentioned, it would have been receivable under the exception to the general rule which ordinarily forbids jurors from impeaching their verdicts. But it has never been the rule that misconduct upon the part of jurors may not be shown to impeach their verdict. If that were sound law, instances of the gravest miscarriage of justice, like in the instant case, would be without redress. Collusion could rage rampant between jurors and litigants and others, secure in the veil of secrecy, and under the protection of privilege. Fortunately, acts of misconduct on the jury's part are reviewable. In the instant case, all the testimony and affidavits received upon the subject could not have more convinced the Judge, than he was already convinced, that the reason the jury recommended the death penalty was because of appellant's representations concerning his relations with Mrs. Stoll. The Judge was speaking judi-

cially, when he made that statement, of what was tantamount to misconduct on the part of the jury. If this jury, as it did, recommended the death penalty for what appellant said rather than what he was indicted for, can it be correctly said that such a jury was not guilty of such gross misconduct as not to be able to have such a verdict impeached? In this case it was not necessary for the Judge to receive affidavits of the jury to impeach their verdict. The reception of affidavits could not have done more to convince the Judge than he was already convinced. As Judge, he had the power and the right to speak judicially on the subject, and he did so. To have received evidence on that fact would have been a futile and useless gesture. To allow such a verdict and recommendation to go unchallenged and uncorrected would be a terrible thing. The law and the Constitution guarantee a fair trial at the hands of an impartial jury, and they guarantee that a man must not only have a fair trial, but that he must feel that he has had one. The appellant in this case does not so feel. Caesar demanded that his wife not only be virtuous but beyond suspicion. There is room for suspicion that the verdict and recommendation in this case was the result of a biased, inflamed and prejudiced jury.

The Court's opinion cites *McDonald v. Pless*, 238 U. S. 264, as authority that jurors may not be permitted to impeach their own verdict. However, that case recites that there is an exception to the general rule that affidavits may not be introduced to impeach jury verdicts, and it refers to the case of *Mattox v. U. S.*, 13 S. Ct. 50, in which this is said:

— "It is vital in CAPITAL cases that the jury should pass upon the case free from external causes tending to disturb the exercise of deliberate and unbiased judg-

ment. Nor can any ground of suspicion that the administration of justice has been interfered with be tolerated."

As this is a capital case, it comes within the exception in the Mattox case. Justice demands that appellant be tried, if at all, at the hands of an unbiased jury, which is but another impelling reason for reversing this case.

IV.

IF THE DISTRICT ATTORNEY'S REMARKS OVER- STEPPED THE BOUNDS, THAT IS GROUND FOR REVERSAL.

On page 22 of the opinion, the Court admits that the District Attorney's remarks overstepped the bounds, but it is added that when considered in connection with the entire argument they have no prejudicial effect. To that extent the opinion is out of harmony with the Berger, the George Sylvester Vierick, the N. Y. C. R. R. v. Johnson, and other cases of like import from the United States Supreme Court. Citation to those cases may be found in appellant's original brief, pages 183 to 194, and in his supplemental brief. The Court is urgently requested to review the complained of argument and statements of the District Attorney and the Assistant District Attorney, and to consider those remarks in the light of the prevailing authorities on the question. The errors made by the District and Assistant District Attorneys were highly prejudicial, and most assuredly the jury was swayed by such remarks.

Wherefore, it is submitted that the present opinion should be withdrawn; that this petition for rehearing

should be sustained; that a new opinion should be rendered reversing this case, and ordering appellant discharged from custody.

Respectfully submitted,

ROBERT E. HOGAN,
809 Kentucky Home Life Building,
Louisville, Kentucky,
Counsel for Appellant.

Certificate of Counsel.

The appellant, by counsel, hereby certifies that in his judgment the foregoing petition for rehearing is well founded and is not interposed for delay.

ROBERT E. HOGAN,
Counsel for Appellant.

August 15, 1944.



[fol. 1574] IN UNITED STATES CIRCUIT COURT OF APPEALS

ORDER DENYING REHEARING—Entered August 28, 1944

The petition to rehear is denied.

[fol. 1575] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

ORDER STAYING MANDATE—Entered September 11, 1944

Ordered, That motion to stay mandate herein pending application to the Supreme Court for writ of certiorari is hereby granted and the mandate is stayed for thirty days from this date; provided that, if within such thirty days, the applicant shall file with the Clerk of this Court the certificate of the Clerk of the Supreme Court that the certiorari petition, record, and brief have been filed, the stay shall continue until the final disposition of the case by the Supreme Court. Unless this condition is complied with within such thirty days or any extension thereof made by the Court or any judge thereof, or if the condition is complied with, then upon the filing of copy of an order denying the writ applied for, the mandate shall issue.

Approved for entry:

(Signed) Xen Hicks, Circuit Judge.

[fol. 1576] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 1577] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1944

No. 514

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS—December 18, 1944

On Consideration of the motion for leave to proceed herein *in forma pauperis*.

It Is Ordered by this Court that the said motion be, and the same is hereby, granted.

[fol. 1578] SUPREME COURT OF THE UNITED STATES, OCTOBER
TERM, 1944

No. 514

ORDER ALLOWING CERTIORARI—January 15, 1945

On Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit.

A petition for rehearing having been filed in this case upon the denial of a petition for writ of certiorari;

Upon consideration thereof, it is ordered by this Court that the said petition be, and the same is hereby, granted.

It is further ordered that the order denying certiorari be, and the same is hereby, vacated; and that the petition for writ of certiorari herein be, and the same is hereby, granted limited to the question presented under Point 1 of the petition for rehearing and under Question 5(d) of the petition for certiorari. The case is transferred to the summary docket.

It is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(6116)

